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IN THE

Supreme Court of the United States

THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ALABAMA-AND THE ALABAMA DEPARTMENT OF YOUTH SERVICES,
Petitioners,

v.

PATRICIA GARRETT AND MILTON ASH,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF FOR THE NATIONAL ASSOCIATION OF PROTECTION AND ADVOCACY SYSTEMS AND UNITED CEREBRAL PALSY ASSOCIATIONS, INC. AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF THE *AMICI CURIAE*[1]

Amicus National Association of Protection and Advocacy Systems (NAPAS), founded in 1981, is the membership organization for the nationwide system of protection and advocacy (P&A) agencies. Located in all 50 States, the District of Columbia, Puerto Rico, and the territories (the

[1] No counsel for any party authored this brief either in whole or in part, and no persons other than the *amici curiae* and their counsel made any monetary contribution to its preparation or submission. The parties' written consents to the filing of this brief have been filed with the Clerk of the Court.

Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands), P&As are mandated under various federal statutes to provide legal representation and related advocacy services on behalf of all people with disabilities in a variety of settings. The P&A system comprises the nation's largest provider of legally based advocacy services for persons with disabilities. P&As are particularly active in providing assistance to persons with disabilities under the Americans with Disabilities Act ("ADA"). In fiscal year 1999 alone, P&As served well over 800,000 persons with disabilities through individual case representation, systemic advocacy, information and referral, and education and training.

Because of its national P&A membership and familiarity with the protections afforded by each State to persons with disabilities, NAPAS has firsthand knowledge of the state laws and how they operate in practice. NAPAS is thus uniquely suited to assist the Court in evaluating petitioners' arguments that Congress did not have authority under the Fourteenth Amendment to apply the ADA to the States because state laws were sufficient in 1990 (and are sufficient today) to prevent discrimination against persons with disabilities.

Amicus United Cerebral Palsy Associations, Inc. ("UCP"), is a Washington, D.C.-based non-for-profit corporation incorporated in 1948. The mission of UCP is to advance the independence, productivity and full citizenship of people with cerebral palsy and other disabilities, through its commitment to the principles of independence, inclusion and self-determination. UCP is the leading source of information on cerebral palsy and is a pivotal advocate for the rights of all people with disabilities. UCP and its nationwide network of 135 affiliates in 39 states strive to ensure the inclusion of persons with disabilities in every facet of society - from the web to the workplace, from the classroom to the community. The UCP family serves 30,000 children and adults with disabilities a day, or over 1,000,000 individuals each year.

UCP has a long-standing history of legal activism on behalf of the individuals with disabilities who are served by the UCP affiliate system. Given UCP's national presence and active work in most States, it is familiar with the state laws and how they operate in practice and, indeed, monitors and tracks the state laws for its affiliates.

INTRODUCTION AND SUMMARY

In enacting the ADA, Congress found that "discrimination against individuals with disabilities continue[s] to be a serious and pervasive social problem." 42 § 12101(a)(2). Such discrimination "persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services." *Id.* § 12101(a)(3). And it persists in significant measure because the estimated "43,000,000 Americans" with disabilities "have often had no legal recourse to redress such discrimination." *Id.* § 12101(a)(1), (4). As a result, Congress concluded (*id.* § 12101(a)(9)) that "the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis" – a right guaranteed to all Americans under the Fourteenth Amendment to the United States Constitution.

Petitioners maintain, however, that Congress failed to identify any "pattern and practice of State equal-protection violations" in "alleged employment or public-access discrimination by State governments." Pet. Br. 4. Prior to the passage of the ADA, they claim, all "50 states" had passed "disability-discrimination law[s] applicable to public and private employers." *Id.* at 6-7. And today, petitioners continue, States "markedly overprotect . . . the constitutional rights of the disabled" (*id.* at 4) because "all 50 states have comprehensive measures guaranteeing the disabled access to public services and places" that in some cases exceed the relief afforded by the ADA. *Id.* at 6-7. In support of these

claims, petitioners have attached as Appendix A to their brief a list of the relevant state statutes that purportedly demonstrate this comprehensive state law protection for persons with disabilities.

These claims, on their face, are difficult to reconcile with the language and history of the ADA. It is hard to believe, for example, that if the 50 state legislatures had adequately addressed the problem of discrimination against individuals with disabilities, the "Fifty State Governors' committees" on whose reports Congress relied would have concluded that "existing State laws do not adequately counter such acts of discrimination."[2] And petitioners' glowing account of state law conflicts sharply with the conclusions of a bipartisan commission of predominantly state and local government officials, who reported in 1989 that irrational prejudice against persons with disabilities continued to lead numerous state and local officials throughout the country to deny employment to persons with disabilities.[3] Indeed, one must ask whether the ADA could have garnered such an overwhelming level of bipartisan and inter-governmental support – unprecedented for major civil rights legislation – had States already solved the problem.

They had not. A review of petitioners' Appendix A confirms that petitioners have greatly exaggerated the extent

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[2] *See, e.g.*, S. Rep. No. 101-116, at 18 (1989) ("S. Rep.").

[3] Advisory Comm'n on Intergovernmental Relations, *Disability Rights Mandates: Federal and State Compliance With Employment Protections and Architectural Barrier Removal*, at 72-73 (April 1989) ("state officials" and "representatives of state advocacy groups" identified "the significant and often negative impact of public and employer attitudes toward persons with disabilities" as a serious impediment to the employment of persons with disabilities "in state government"); *see also id.* at 73 ("Such attitudes have multiple dimensions, including feelings of discomfort in associating with disabled individuals, inaccurate assessments of their productivity, and concerns about the costs that might be associated with work place accommodations").

of state law protection for individuals with disabilities against invidious discrimination in 1990 and today. In reality, state law in 1990 reflected a patchwork of inconsistent coverage and remedies, often seriously limiting the ability of many persons with disabilities to gain redress for discrimination, and excluding some persons with disabilities from protection altogether. The specific ways in which petitioners' Appendix A overstates petitioners' case are summarized in the Appendix attached to this brief. For each State, the Appendix reproduces verbatim, in the left two columns, the information that petitioners provided in their Appendix A. In the right-hand column, labeled "comments," *amici* note specific limitations on the nature or scope of the coverage actually afforded by the provisions petitioners cite.

This analysis confirms that Congress acted well within the limits of its power to enforce the Fourteenth Amendment when it enacted the ADA. First, Congress was plainly responding to a massive denial of the right to equal protection of the laws that was limited neither to certain geographic areas nor to the private sector. Congress was well aware that discrimination against individuals with disabilities is rooted in pernicious myths and stereotypes to which state officials – like any other citizens – are not immune. And Congress expressly found that discrimination against persons with disabilities is a persistent, pervasive, societal problem that burdens the ability of a discrete class of Americans to participate equally in all aspects of public life – including numerous areas in which the States are heavily or predominantly involved. These findings, and the legislative record that supports them, amply demonstrate that Congress passed the ADA in response to a problem of constitutional dimensions.

Second, Congress acted within its "wide latitude" to remedy and deter violations of equal protection when it crafted the ADA. *City of Boerne* v. *Flores*, 521 U.S. 507, 520 (1997). In responding to constitutional violations, Congress

may prohibit "a somewhat broader swath of conduct" than is forbidden by the Fourteenth Amendment. *Kimel* v. *Florida Bd. of Regents*, 120 S.Ct. 631, 644 (2000). Where, as here, "the evil presented" is serious and pervasive, Congress is fully empowered to take "[s]trong measures" to address it. *City of Boerne*, 521 U.S. at 530.

That Congress chose means well-suited to its purposes is borne out, in particular, by an analysis of the gaps and defects in state law at the time the ADA was passed. For example, in 1990, many States failed to provide coverage to all members of the discrete class of persons with disabilities that Congress found had been "subjected to a history of purposeful unequal treatment." 42 U.S.C. § 12101(a)(7). People with mental impairments, for example, such as mental illness or mental retardation, had no legal recourse against discrimination whatsoever under the laws of many States.

Where state laws did address discrimination, they often did so in ways that denied individuals with disabilities an effective remedy. For example, many States did not require employers to provide reasonable accommodation to persons with disabilities, thereby effectively allowing the fact of an individual's disability to excuse invidious discrimination. Similarly, many state remedial schemes lacked adequate provisions for recovery of damages, rendering them ineffective as both a remedy and a deterrent to discrimination. And many States had not begun to adapt their laws to address the unnecessary and inappropriate institutionalization of many Americans whose needs were better served in less restrictive environments. In each of these areas, the ADA implemented balanced and proven measures that appropriately responded to the history of unconstitutional discrimination and the failure of state laws to remedy or deter this discrimination. As national legislation, the ADA ensures that persons with disabilities have consistent protection from invidious discrimination no matter where they live or where they travel.

Finally, petitioners understate what is at stake in this case by overstating the degree to which state law today mirrors the protection of the ADA. Many States still fail to provide remedies comparable to those offered by the ADA, and thus would fail, standing alone, to deter invidious discrimination. And since some States are prepared to follow this attack on the ADA with a challenge to Congress's power under the Commerce Clause to enact all of Title II, the stakes here are very high indeed. Thus, not only was Congress acting within its enforcement power under the Fourteenth Amendment when it enacted the ADA, but the continuing vitality of the ADA remains vital to secure the guarantee of equal protection for all Americans.

ARGUMENT

I. CONGRESS ACTED WITHIN ITS SECTION 5 AUTHORITY IN ENACTING THE ADA.

A. Congress Has Wide Latitude In Enacting Legislation To Deter And Remedy State Violations Of Equal Protection.

Section 1 of the Fourteenth Amendment to the United States Constitution provides: "No State shall . . . deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." Section 5 of the Fourteenth Amendment provides: "Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

Section 5 is "'a positive grant of legislative power' to Congress." *City of Boerne* v. *Flores*, 521 U.S. 507, 517 (1997) (quoting *Katzenbach* v. *Morgan*, 384 U.S. 641, 651 (1966). This Court consistently has defined Congress's Section 5 power in "broad" terms. *Id.* at 517, 536; see *Fitzpatrick* v. *Bitzer*, 427 U.S. 445, 456 (1976) ("When Congress acts pursuant to § 5 . . . it exercis[es] legislative

authority that is plenary within the terms of the constitutional grant").

When addressing whether Congress has acted within this broad grant of authority, the Court typically addresses two issues. First, the Court considers whether Congress was legislating in response to "conduct transgressing the Fourteenth Amendment's substantive provisions." *Florida Prepaid Postsecondary Ed. Expense Bd.* v. *College Sav. Bank*, 527 U.S. 627, 639 (1999). As the Court explained in *City of Boerne*, Congress does not have power to "decree the substance of the Fourteenth Amendment's restrictions"; it may enforce that amendment, but it cannot "chang[e] what the right is." 521 U.S. at 519. Defining the scope of the rights protected under the Fourteenth Amendment is, of course, the province of this Court.

Second, the Court addresses whether, in responding to a violation of the Fourteenth Amendment, there is "congruence and proportionality" between the violation and the remedy. *City of Boerne*, 521 U.S. at 520. In contrast to the first inquiry, the question of "'what legislation is needed to secure the guarantees of the Fourteenth Amendment'" is a matter chiefly committed to Congress, and for that reason "its conclusions are entitled to much deference." *Id.* at 536 (quoting *Katzenbach* v. *Morgan*, 384 U.S. 641, 651 (1966); see *Kimel* v. *Florida Bd. of Regents*, 120 S. Ct. 631, 644 (2000) (same).[4] Thus, Congress has broad leeway in fashioning legislative responses to constitutional violations.

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[4] *See also Ex Parte Virginia*, 100 U.S. 339, 345-46 (1879):

> Whatever legislation is appropriate, that is, adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibitions they contain, and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion, if not prohibited, is brought within the domain of congressional power.

For example, in responding to a violation of the Fourteenth Amendment, Congress "is not confined" to legislation that is tailored to address only the unconstitutional conduct. *Kimel*, 120 S. Ct. at 644. "Rather, Congress' power 'to enforce' the Amendment includes the authority both to remedy *and to deter* violation of rights guaranteed thereunder by prohibiting a somewhat broader swath of conduct, including that which is not itself forbidden by the Amendment's text." *Id.* (emphasis added) (citations omitted). Of course, at some point Congress's remedial and prophylactic legislation could sweep so far beyond the violation as to cross the line that separates valid enforcement action from "a substantive redefinition of the Fourteenth Amendment right at issue." *Id.* But because "Congress must have wide latitude in determining where [that line] lies," the Court's review is limited to a deferential assessment of whether there is "'a congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end.'" *Id.* (quoting *City of Boerne*, 521 U.S. at 520).

B. Congress Responded To Extraordinary Evidence Of Invidious Discrimination Against Persons With Disabilities, Including Discrimination By State Actors.

In asserting that Congress was not responding to a record of on-going and substantial violations of the right to equal protection, petitioners face an uphill battle. They must confront, first and foremost, the explicit findings in section 12101 of pervasive constitutional violations on which Congress expressly premised the ADA. For example, Congress found that discrimination against persons with disabilities

- "continue[s] to be a serious and pervasive social problem" (42 U.S.C. § 12101(a)(2));
- "persists in [numerous] critical areas" (*id.* § 12101(a)(3));

- affects individuals who "have often had no legal recourse" (*id.* § 12101(a)(4));

- is "continually encounter[ed in] various forms . . . including outright intentional exclusion" (*id.* § 12101(a)(5));

- "result[s] from stereotypic assumptions not truly indicative of the individual ability of such individuals" (*id.* § 12101(a)(7)); and

- "denies people with disabilities the opportunity to compete on an equal basis" (*id.* § 12101(a)(9)).

These codified findings of continuing discrimination capture the essence of what this Court has consistently defined as the violation of the Fourteenth Amendment right to the equal protection of the laws. It is difficult to imagine how Congress could have more directly and expressly identified a pattern of conduct denying persons the right to equal protection than it did in the ADA.

There is certainly no support for petitioners' contention that these explicit findings can support legislation against discrimination only in the private sector. To the contrary, many of the "critical areas" in which Congress expressly found discrimination to be "pervasive" – such as "employment, . . . education, . . . institutionalization, . . . voting, and access to public services" (*id.* § 12101(a)(3)) are areas in which state governments play at least a central if not dominant role. There is no private sector limitation to these arenas. Moreover, the underlying cause of the ongoing discrimination that Congress identified – the persistence of "stereotypic assumptions not truly indicative" of individual ability (*id.* § 12101(a)(7)) – applies as fully to individuals in public agencies as it does to those in the private sector. Thus, Congress's findings – both as to cause and effect – fully support its decision to extend the full protection of the ADA to those facing discrimination from state officials as well as from private actors.

The legislative record against which Congress made these findings amply supports them. As the briefs of respondents and other amici set forth in detail, Congress acted against a massive record of virulent discrimination – both historic and contemporary – that included discrimination by state and local agencies throughout the nation. These briefs further describe how the judicial record – which also serves as the basis for Congressional action – provides further confirmation that state and federal law had proven ineffective to deter state actors from discriminating against individuals with disabilities. As we show in Part I.C, the inability of state law to deter and remedy discrimination against persons with disabilities is not surprising – state law fell far short of providing the consistent coverage and meaningful remedies that Congress mandated in the ADA.

The findings and record here thus stand in stark contrast to those involving the Age Discrimination in Employment Act (ADEA) and the Religious Freedom Restoration Act (RFRA), on which petitioners heavily rely. For example, in the ADA, Congress extended protection only to a discrete class of persons who have been "subjected to a history of purposeful unequal treatment," whereas in the ADEA, Congress acted to protect a class to which "all persons" would eventually belong, and which has "not been subjected" to such a history of unequal treatment. *Kimel*, 120 S. Ct. at 645 (internal quotation omitted). Similarly, the record supporting the ADA is light-years removed from that supporting RFRA, where "[t]he history of persecution in this country detailed in the hearings mention[ed] no episodes occurring in the past 40 years." *City of Boerne*, 521 U.S. at 530. Thus, with respect to discrimination against persons with disabilities, Congress sought – and was amply justified, as a factual matter, in seeking – to remedy on-going discrimination on the part of the States.

C. The ADA Is A Congruent and Proportional Response To The States' Constitutional Violations, Which State Laws Failed To Address.

In responding to the fact of pervasive discrimination against individuals with disabilities, in both the public and private sectors, Congress crafted a statute that is congruent and proportional to the constitutional violations it found. That is true with respect to the way Congress defined the covered class, the prohibited conduct, and the available remedies.

In defining the class of persons with a disability, Congress drew on the Rehabilitation Act's definition of "handicapped individual," which this Court had previously recognized was an important and comprehensive means of combating societal discrimination against persons with disabilities. See, *e.g.*, 42 U.S.C. § 12102(2); *School Bd.* v. *Arline*, 480 U.S. 273, 281-86 (1987). And in devising a remedial scheme, Congress borrowed from the Rehabilitation Act as well as from the enforcement provisions for Title VII of the Civil Rights Act. See, *e.g.*, 42 U.S.C. § 12117 (incorporating into Title I of the ADA various "powers, remedies, and procedures" of Title VII); *id.* § 12133 (incorporating into Title II of the ADA various "remedies, procedures, and rights" set forth in Section 504 of the Rehabilitation Act). Because Congress found that the scope of "the evil presented" was vast, it reasonably concluded that "clear, strong, consistent, enforceable standards" (*id.* § 12101(b)(2)) comparable to those used to combat other forms of discrimination were needed here as well.

In concluding that national standards were needed to complement existing state law remedies, Congress was also aware of the inadequacy of existing state laws. The Senate Report observes, for example, that "State laws are inadequate to address the pervasive problems of discrimination that people with disabilities are facing." S. Rep. at 18. The Senate Report also notes that the "fifty State Governors' Committees, with whom the President's Committee works,

report that existing State laws do not adequately counter such acts of discrimination." *Id.* Congressional testimony further supported these findings. See, *e.g.*, *Hearings on S. 933 Before the Senate Comm. on Labor and Human Resources and the Subcomm. on the Handicapped*, 101st Cong. 299, 334 (1989) (statement of Arlene B. Mayerson) ("While 44 states have passed laws prohibiting employment discrimination against persons with disabilities, only twelve are comparable to the Rehabilitation Act in providing protections against discriminatory practices"); *id.* at 335 ("[M]any state statutes have very restrictive definitions of 'handicap.'"); *id.* at 336 ("[N]early one-half of the states do not require any reasonable accommodation" and of those that do, "several define the term restrictively").[5]

Because petitioners have challenged these congressional findings, however, it is useful to examine more closely the level of protection that state law actually provided in 1990. Such a review confirms that – by comparison with the ADA – state law was plagued by gaps in coverage and remedies that are more than sufficient to explain the continuing failure of state law to deter discrimination against persons with disabilities in both the public and private sectors, and to justify the particular legislative measures that Congress took.

1. Coverage

Congress had to define the class of persons eligible for the protection it provided, and it did so in a way that was entirely commensurate with the record of discrimination that it sought to address. Congress adopted a definition that afforded protection to many individuals with disabilities that the States had failed to cover.

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[5] *See also* J. Flaccus, *Handicap Discrimination Legislation: With Such Inadequate Coverage at the Federal Level, Can State Legislation Be of Any Help?*, 40 Ark. L. Rev. 185, 261 (1986) (summarizing limits of state law protection) (cited in testimony of Arlene B. Mayerson).

Specifically, Congress adopted a functional definition of disability. Under the ADA:

> The term 'disability' means, with respect to an individual –
>
> (A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
>
> (B) a record of such an impairment; or
>
> (C) being regarded as having such an impairment.

42 U.S.C. § 12102(2). By defining disability in this functional manner, Congress ensured that no individual with a significant impairment likely to give rise to discrimination would be excluded from coverage under the ADA. In this respect, Congress responded to significant areas of discrimination that state laws failed to cover.

For example, many States wholly excluded people with mental impairments from any protection against discrimination on that basis. In 1990, 12 States did not cover people with mental illness,[6] and 7 States did not cover people with mental retardation.[7] Thus, in these jurisdictions, individuals who Congress found to have been subject to a

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[6] *See* Ala. Code § 21-7-8 (1990); Ariz. Rev. Stat. Ann. § 41-1461(4) (West 1990); Cal. Gov't Code § 12926(h) (West 1990); Colo. Rev. Stat. Ann. § 24-34-402(1)(a) (West 1990), *cf. AT&T Techs., Inc.* v. *Royston*, 772 P.2d (Colo. Ct. App. 1989); Ga. Code Ann. § 34-6A-2(7)(B) (1990); Kan. Stat. Ann. § 44-1002 (1990); Ky. Rev. Stat. Ann. § 207.130 (1990); La. Rev. Stat. Ann. § 46:2253 (West 1990); Mich. Comp. Laws § 37.1103 (1990); Miss. Code Ann. § 43-6-15 (1990); Nev. Rev. Stat. §§ 281.370, 613.330 (1990); N.H. Rev. Stat. Ann. § 354-A:3 (1990).

[7] *See* Ala. Code § 21-7-8 (1990); Ariz. Rev. Stat. Ann. § 41-1461(4) (West 1990); Colo. Rev. Stat. Ann. § 24-34-402(1)(a) (West 1990), *cf. AT&T Techs., Inc.* v. *Royston*, 772 P.2d (Colo. Ct. App. 1989); Kan. Stat. Ann. § 44-1002 (1990); Ky. Rev. Stat. Ann. § 207.130 (Michie 1990); Miss. Code Ann. § 43-6-15 (1990); Nev. Rev. Stat. §§ 281.370, 613.330 (1990).

long history of discriminatory treatment[8] were denied access to the remedies that the State offered to those who could show a different type of impairment. Moreover, one jurisdiction limited the coverage even of those with physical disabilities by excluding all persons with communicable diseases.[9] Arkansas did not prohibit employment discrimination against the disabled at all in 1990.

Similarly, in borrowing its definition of disability from the Rehabilitation Act, Congress included not only those individuals with a physical or mental impairment that currently operated to substantially limit a major life activity, but those who had a "record of" or who were "regarded as" having such an impairment. 42 U.S.C. § 12102(2).

The importance of these definitions cannot be gainsaid. This Court relied on the complainant's "record of" impairment in concluding that an elementary school teacher had a cause of action under the Rehabilitation Act against the local public school board for irrational discrimination based on a past impairment (tuberculosis). *Arline*, 480 U.S. at 281. Congress specifically included in the ADA's coverage individuals who have a "record of" impairment in order to protect "individuals who have recovered from a physical or mental impairment which previously substantially limited them, in a major life activity." S. Rep. at 23. Congress cited as frequently occurring examples of this group individuals with histories of mental or emotional illness, heart disease or cancer, and individuals who have been misclassified as mentally retarded. *Id.*

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[8] 42 U.S.C. § 12101(a) (citing to pervasive history of discrimination suffered by persons with "physical *or mental* disabilities") (emphasis added); *see also City of Cleburne* v. *Cleburne Living Ctr.*, 473 U.S. 432, 461-65 (1985) (Marshall, J., concurring in the judgment in part and dissenting in part) (detailing history of invidious discrimination against the mentally retarded).

[9] Ky. Rev. Stat. Ann. § 207.140(2)(c) (Michie 1990).

As for the "regarded as" prong, Congress first recognized its importance when it amended the Rehabilitation Act in 1974 to include such coverage. As this Court observed, this amendment reflected Congress's "acknowledge[ment] that society's accumulated myths and fears about disability and disease are as handicapping as are the physical limitations that flow from actual impairment." *Arline*, 480 U.S. at 284.

And indeed, the legislative history of the ADA confirms that many of those most vulnerable to irrational and invidious discrimination on the basis of misperceptions of disability would lack a remedy absent coverage under the "regarded as" definition. Congress sought to protect "individuals who have impairments that do not in fact substantially limit their functioning" but that may give rise to "negative attitudes" in others, such as burn victims, or individuals with medical conditions that are under control, such as diabetes, high blood pressure, or epilepsy. S. Rep. at 23-24; *see Sutton* v. *United Air Lines*, 527 U.S. 471, 488 (1999).

Nevertheless, in 1990 – 15 years after the Rehabilitation Act amendments and 3 years after *Arline* – 17 States did not protect those who had a record of disability,[10] and 22 States did not protect those who were regarded as having a disability.[11] One State even affirmatively excluded persons

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[10] *See* Ala. Code § 21-7-8 (1990); Ariz. Rev. Stat. Ann. § 41-1461(4) (West 1990); Cal. Gov't Code § 12926(h) (1990); Ind. Code Ann. § 22-9-1-3(r) (West 1990); Iowa Code Ann. § 216.2 (West 1990); Kan. Stat. Ann. § 44-1002 (1990); Ky. Rev. Stat. Ann. § 207.130 (Michie 1990); Me. Rev. Stat. Ann. tit. 5, § 4553 (West 1990); Md. Ann. Code art. 49B, § 15(g) (1990); Miss. Code Ann. § 43-6-15 (1990); Mont. Code Ann. §§ 49-2-101, 49-3-101, 39-30-103 (1990); Neb. Rev. Stat. § 48-1102 (1990); Nev. Rev. Stat. §§ 281.370, 613.330 (1990); N.H. Rev. Stat. Ann. § 354-A:3 (1990); N.Y. Exec. Law § 292(21)(a) (McKinney 1990); Tenn. Code Ann. § 8-50-103 (1990); Utah Code Ann. § 34-35-2(9) (1990).

[11] *See* Ala. Code § 21-7-8 (1990); Ariz. Rev. Stat. Ann. § 41-1461(4) (West 1990); Cal. Gov't Code § 12926(h) (1990); Conn. Gen. Stat. Ann. § 462-60(a)(1) (West 1990); Ga. Code Ann. § 34-6A-2(3) (1990); Ind.

with any "cosmetic disfigurement" from protection against discrimination.[12] The ADA directly protects all these individuals from discrimination.

At the same time, as this Court has held, the ADA does not sweep so broadly in its coverage as to include, for example, those individuals with an impairment, such as myopia, that is correctable and that, in its corrected state, does not substantially limit a major life activity. See *Sutton*, 527 U.S. at 471. By covering only "a confined, and historically disadvantaged, class," (*id.* at 495) (Ginsburg, J., concurring), and not extending protection to every individual who could claim any sort of impairment, the ADA is appropriately tailored to extend only to the discrete class of persons who have been subjected to denials of their right to equal treatment under the law.

2. Reasonable Accommodation

The ADA's broad requirement of reasonable accommodation likewise is a congruent and proportional response to discrimination against persons with disabilities that many States failed to deter. "Discrimination" under the ADA includes:

> not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or

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Code Ann. § 22-9-1-3(r) (West 1990); Iowa Code Ann. § 216.2 (West 1990); Kan. Stat. Ann. § 44-1002 (1990); Ky. Rev. Stat. Ann. § 207.130 (Michie 1990); Me. Rev. Stat. Ann. tit. 5, § 4553 (1990); Md. Ann. Code art. 49B, § 15(g) (1990); Mich. Comp. Laws § 37.1103 (1990); Miss. Code Ann. § 43-6-15 (1990); Mont. Code Ann. §§ 49-2-101, 49-3-101, 39-30-103 (1990); Neb. Rev. Stat. § 48-1102 (1990); Nev. Rev. Stat. §§ 281.370, 613.330 (1990); N.H. Rev. Stat. Ann. § 354-A:3 (1990); N.Y. Exec. Law § 292(21)(a) (McKinney 1990); Tenn. Code Ann. § 8-50-103 (1990); Tex. Lab. Code Ann. § 21.051 (West 1990); Utah Code Ann. § 34-35-2(9) (1990); Va. Code Ann. § 51.5-3 (Michie 1990).

[12] *See* La. Rev. Stat. Ann. § 46:2253 (West 1990).

> employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity.

42 U.S.C. § 12112(b)(5)(A). This uniform national requirement was necessary to remedy and deter discrimination because 15 States wholly lacked reasonable accommodation requirements,[13] and additional States limited their reasonable accommodation requirements so as to render them virtually meaningless.[14] See S. Rep. at 9 ("[T]he major categories of job discrimination faced by people with disabilities include . . . failure to provide or make available reasonable accommodations").

Reasonable accommodation requirements can often be a critical remedy for individuals with disabilities. That is because, in the absence of a requirement, it is all too easy for an employer to point to a supposed concern about the cost of making any accommodation for a person with disabilities, and to use that unexamined concern as an excuse to justify what is in reality a decision motivated by prejudice against a person

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[13] *See* Ala. Admin. Code r. 670-x-4-.03 (1990); Ala. Code § 21-7-8 (1990); Ark. Code contained no prohibition of employment discrimination against the disabled in 1990; Fla. Stat. ch. 760.10 (1990); Ga. Code Ann. § 34-6A-4(a) (1990); Haw. Rev. Stat. Ann. § 378-3(3) (Michie 1990); Ind. Code Ann. § 22-9-1-3 (West 1990); Ky. Rev. Stat. Ann. § 207.150 (Michie 1990); Miss. Code Ann. § 43-6-15 (1990); Mont. Code Ann. § 49-2-101 (1990); Nev. Rev. Stat. §§ 281.370, 613.330 (1990); N.H. Rev. Stat. Ann. § 354-A:8 (1990); Okla. Stat. Ann. tit. 25, § 1302 (West 1990); S.C. Code Ann. § 1-13-80(A) (Law. Co-op. 1990); Tenn. Code Ann. § 8-50-103(a) (1990); Utah Code Ann. § 34-35-6 (1990).

[14] *See, e.g.*, La. Rev. Stat. Ann. § 46:2253 (West 1990) (not requiring employer to spend more for architectural modifications than amount allowed as federal tax deduction); Neb. Rev. Stat. § 48-1102 (1990) (not requiring accommodations that entail more than "de minimis expense"); N.C. Gen. Stat. § 168A-3 (1990) (not requiring accommodation if cost of making changes over course of disabled person's employment would exceed 5% of employee's annual salary).

with a disability. The reasonable accommodation requirement thus serves the critical purpose of ensuring that an employer's professed concerns about whether a particular workplace or program can accommodate a person with a disability are not simply accepted at face value, but are tested against an individualized and reasonable assessment of the facts and circumstances of the individual and the job or program in question.

For example, respondent Ash's principal claim is that his public employer refused to take reasonable steps to accommodate his respiratory diseases, even though he was only asking that his employer enforce *its own* no-smoking policy and bring its vehicles into compliance with state law -- and even though he provided evidence from his doctor establishing that these steps were necessary for his continued health. Mr. Ash sought reasonable accommodations as a sensible and workable way of allowing him to continue in his employment without jeopardizing his health. Were his public employer not obligated to provide such accommodation, it is not clear that he either could or would continue in his present employment.

Accordingly, persons with disabilities must be treated on an individualized basis in order to avoid discriminatory treatment (such as requiring an employee with respiratory illnesses to drive vehicles that do not meet state emissions safety standards). This is precisely what reasonable accommodation requirements do. They require employers to address persons with disabilities on an individualized basis and attempt to identify reasonable accommodations that will enable successful employment. At the same time, by ensuring that no defendant must endure an "undue hardship" in accommodating the needs of persons with disabilities, 42 U.S.C. § 12112(b)(5)(A), the ADA properly cabins its scope to meet its goals through measured and reasonable means.

3. Remedies

The ADA's remedial scheme similarly reflects Congress's reasonable decision that the record of pervasive discrimination against individuals with disabilities could be traced, in part, to the inadequacy of many state remedies. For example, in 1990, in 16 States, compensatory damages were wholly unavailable (even to remedy and deter intentional discrimination),[15] and in 3 States, complainants had no private right of action at all.[16]

These remedial and enforcement limits substantially limited the effectiveness of state anti-discrimination laws. They deterred the filing of claims rather than the practice of discrimination. Without effective private rights of action,

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[15] Ala. Admin. Code r. 670-x-4-.03 (1990); Ark. Code contained no prohibition of employment discrimination against the disabled in 1990; Ariz. Rev. Stat. Ann. § 41-1481(G) (West 1990); Colo. Rev. Stat. Ann. §§ 24-34-306, 24-34-405 (West 1990); Conn. Gen. Stat. Ann. §§ 46a-60, 46a-86 (West 1990), *cf. Bridgeport Hosp.* v. *Commission on Human Rights & Opportunities*, 653 A.2d 782 (Conn. 1995); Del. Code Ann. tit. 19, §§ 712, 727 (1990); Md. Ann. Code art. 49B, § 11 (1990); Miss. Code Ann. §§ 25-9-131, -132 (1990); Neb. Rev. Stat. § 48-1119 (1990); N.C. Gen. Stat. § 168A-11(b) (1990); N.D. Cent. Code § 14-02.4-20 (1990); R.I. Gen. Laws § 28-5-24 (1990); S.D. Codified Laws § 20-13-35.1 (Michie 1990); Tex. Lab. Code Ann. § 21.258 (West 1990); Utah Code Ann. § 34A-35-7.1(9), (15) (1990); Wis. Stat. § 111.39 (1990).

Additional States have capped compensatory damages at extremely low amounts. *See, e.g.*, Kan. Stat. Ann. § 44-1005(k) (1990, 2000) (in 1990 and today, limits emotional damages to $2,000); S.C. Code Ann. §§ 43-33-540, -550 (Law. Co-op. 1990, 2000) (in 1990 and today, limits actual damages to $5,000); Wash. Rev. Code § 49.60.250 (1990, 2000) (compensatory damages in administrative proceedings limited to $1,000 in 1990 and $10,000 today); W. Va. Code § 5-11-13 (1990, 2000) (in 1990 and today, compensatory damages in administrative proceedings limited to the equivalent of $1,000 in 1977 dollars).

[16] Ala. Admin. Code r. 670-x-4-.03 (1990); Ala. Code § 21-7-8 (1990); Ark. Code contained no prohibition of employment discrimination against the disabled in 1990; Md. Ann. Code art. 49B, §§ 10, 11 (1990).

complainants had to rely on administrative enforcement schemes and were limited in the relief that they could obtain. Where damages were unavailable, complainants had limited incentive to sue.

The remedial and enforcement provisions of the ADA are a proportionate response to persistent discrimination by state actors. These provisions overcome the specific deficiencies in state laws that made it difficult for many complainants to obtain effective and meaningful relief. The employment discrimination provisions in Title I of the ADA incorporate by reference the enforcement provisions under Title VII of the Civil Rights Act of 1964. 42 U.S.C. § 12117(a). Under this scheme, complainants may bring a private right of action in federal court once they have exhausted their administrative remedies with the EEOC. Available relief includes injunctive relief and back pay accruing from two years prior to the filing of the EEOC charge. *Id.* § 2000e-5(g). Compensatory damages are available against respondents who engage in "unlawful intentional discrimination" or who violate the provisions concerning reasonable accommodation. *Id.* § 1981a(a)(2).

Similarly, the public services discrimination provisions in Title II of the ADA incorporate by reference the enforcement provisions under Section 504 of the Rehabilitation Act (which themselves are based on the enforcement provisions of Title VI of the Civil Rights Act of 1964). *Id.* § 12133 (incorporating enforcement provisions of Section 504, 29 U.S.C. § 794a). Under this scheme, plaintiffs may bring a private right of action without exhausting any administrative remedies and may obtain injunctive relief and damages.

By basing the remedies under the ADA on the proven anti-discrimination measures of Title VII and the Rehabilitation Act, Congress again acted prudently and well within its discretion to respond congruently and proportionately to the record of invidious discrimination by creating a uniform national remedy and enforcement scheme to deter

unconstitutional conduct that state remedial schemes, with their many gaps and weaknesses, did not deter.

4. Community Integration

Petitioners also claim that the States had fully addressed discrimination in the area of institutionalization. In reality, the ADA is a proportional response to pervasive discrimination in the form of unjustified institutionalization. See 42 U.S.C. § 12101(a)(3); see also *Olmstead* v. *L.C. ex rel. Zimring*, 527 U.S. 581, 600 (1999) (recognizing "that unjustified institutional isolation of persons with disabilities is a form of discrimination"); *City of Cleburne* v. *Cleburne Living Ctr.*, 473 U.S. 432, 464 (1985) (Marshall, J., concurring in the judgment in part and dissenting in part) (noting that the "lengthy and continuing isolation" of persons with disabilities "perpetuated the ignorance, irrational fears, and stereotyping that long have plagued them"). To remedy this past discrimination, ADA regulations require public entities to "administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 C.F.R. § 35.130(d) (1998). Public entities must also make "reasonable modifications," but need not do so if "the modifications would fundamentally alter the nature of the service, program, or activity." 28 C.F.R. § 35.130(b)(7).

In their Appendix A, petitioners mischaracterize various state statutes as "state policies favoring deinstitutionalization." Nearly all of these state statutes apply only to civil commitment proceedings for a subset of persons with disabilities (those with mental illness), see Appendix, and some are further limited to only those who pose a substantial risk of harm to themselves or others.[17] The ADA, on the other hand, applies to all persons with disabilities residing in

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[17] *See, e.g.*, 405 Ill. Comp. Stat. §§ 5/1-119, 5/3-811 (West 1990); Md. Code Ann. Health-Gen. § 10-632(e)(2) (1990); Mass. Gen. Laws ch. 123 § 8 (1978).

institutions, nursing homes, and other facilities, not just those who have been civilly committed.[18] Moreover, the ADA, unlike many state policy statements, creates enforceable rights to placement in the most integrated setting appropriate, whereas state law at best does not require anyone to be moved unless there is an existing community placement already available and unfilled[19] – a circumstance that rarely occurs. At the same time, the ADA also takes into account the practical and fiscal burdens of implementing reasonable modifications.[20] In so doing, the ADA is yet another congruent and proportional response to the long history of discrimination left unaddressed by the States.

II. INVALIDATING THE ADA PROVISIONS PROVIDING FOR DAMAGES AGAINST THE STATES WOULD SEVERELY UNDERMINE THE PROTECTIONS AFFORDED TO PERSONS WITH DISABILITIES.

The issue before the Court is one of substantial importance, and with substantial consequences, for individuals with disabilities. If this Court invalidates the ADA provisions providing for a damages remedy against the States, persons with disabilities in many States will lack any comparable remedy. Even though many States after 1990 took action to

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[18] *See* 28 C.F.R. § 35.130(d) (applicable to all "qualified individuals with disabilities").

[19] *E.g., Department of Health and Mental Hygiene* v. *Dillman*, 695 A.2d 211 (Md. 1997).

[20] *See* 28 C.F.R. § 35.130(b)(7) (providing exception to reasonable modification requirement if modification fundamentally alters the service, program or activity); *see Olmstead*, 527 U.S. at 604 ("Sensibly construed, the fundamental-alteration component of the reasonable-modification regulation would allow the State to show that, in the allocation of available resources, immediate relief for the plaintiffs would be inequitable, given the responsibility the State has undertaken for the care and treatment of a large and diverse population of persons with mental disabilities").

upgrade their laws and duplicate the protections afforded by the ADA, a significant number did not. The fact remains that there are substantial gaps and shortcomings in state laws today. For example, even today, 6 States lack a reasonable accommodation requirement,[21] and 2 States still do not allow complainants to bring a private right of action.[22] In 7 other States, a compensatory damages remedy is still unavailable.[23] Even where state laws do provide for a damages remedy against the States, this remedy is not uniformly available to all persons with disabilities in many States due to the fact that many state laws do not cover certain subpopulations of individuals with disabilities. For example, 6 state laws still do not cover people with mental illness;[24] 4 state laws still do not cover people with mental retardation;[25] 8 state laws still

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[21] Ala. Admin. Code r. 670-x-4-.03 (2000); Ala. Code § 21-7-8 (2000); Ga. Code Ann. § 34-6A-4(a) (1999); Haw. Rev. Stat. Ann. § 378-3(3) (Michie 1999); Ind. Code Ann. § 22-9-1-3 (West 2000); Miss. Code Ann. § 43-6-15 (2000); N.H. Rev. Stat. Ann. § 354-A:7 (1999).

[22] Ala. Admin. Code r. 670-x-4-.03 (2000); Ala. Code § 21-7-8 (2000); Md. Ann. Code art. 49B, §§ 10, 11 (1999).

[23] Ariz. Rev. Stat. Ann. § 41-1481(G) (West 2000); Ark. Code Ann. § 16-123-107(c)(2)(A) (Michie 1999); Miss. Code Ann. §§ 25-9-131, -132 (2000); N.C. Gen. Stat. § 168A-11(b) (2000); N.D. Cent. Code § 14-02.4-20 (1999); Utah Code Ann. § 34A-5-107(9) (1999), *cf. Barton* v. *Exam Ctr. Indus. and Gen. Med. Clinic, Inc.*, 994 P.2d 1261, 1267 (Utah 2000); Wis. Stat. § 111.39 (2000).

[24] Ala. Code § 21-7-8 (2000); Ariz. Rev. Stat. Ann. § 41-1461(4) (West 2000); Colo. Rev. Stat. Ann. § 24-34-402(1)(a) (West 1999), *cf. AT&T Techs., Inc.* v. *Royston*, 772 P.2d 1182 (Colo. Ct. App. 1989); Ga. Code Ann. § 34-6A-2(7)(B) (1999); La. Rev. Stat. Ann. § 23:322 (West 2000); Miss. Code Ann. § 43-6-15 (2000).

[25] Ala. Code § 21-7-8 (2000); Ariz. Rev. Stat. Ann. § 41-1461(4) (West 2000); Colo. Rev. Stat. Ann. § 24-34-402(1)(a) (West 1999), *cf. AT&T Techs., Inc.* v. *Royston*, 772 P.2d 1182 (Colo. Ct. App. 1989); Miss. Code Ann. § 43-6-15 (2000).

do not cover people who have a record of impairment;[26] and 8 state laws still do not cover people who are regarded as having an impairment.[27] Finally, even where state statutes nominally offer a remedy, case backlogs and other procedural and resource limitations often make it very difficult for complainants to use state procedures to enforce their rights.

There is no reason to think that the state legislatures will act now to rectify the deficiencies in their laws, given that they have not done so in the ten years since the ADA was enacted. And, of course, discrimination against persons with disabilities will not simply go away. Accordingly, the comprehensive coverage and remedies available under the ADA are vital to the protection of persons with disabilities and many persons with disabilities will be harmed if these protections are taken away.

Moreover, the impact of a decision that the ADA provisions at issue cannot be sustained under Section 5 may go beyond the ADA's damages remedy. Vindication of Congress's decision to invoke its enforcement authority under the Fourteenth Amendment is important because some States are prepared to argue (and, indeed, already have argued)[28] that

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[26] Ala. Code § 21-7-8 (2000); Ark. Code Ann. § 16-123-102 (Michie 1999); Ind. Code Ann. § 22-9-1-3(r) (West 2000); Iowa Code Ann. § 216.2 (West 1999); N.Y. Exec. Law § 292(21)(a) (McKinney 2000); Md. Ann. Code art. 49B, § 15(g) (1999); Miss. Code Ann. § 43-6-15 (2000); Utah Code Ann. § 34A-5-102(5) (2000).

[27] Ark. Code Ann. § 16-123-102 (Michie 1999); Ga. Code Ann. § 34-6A-2(3) (1999); Iowa Code Ann. § 216.2 (West 1999); N.Y. Exec. Law § 292(21)(a) (McKinney 2000); Md. Ann. Code art. 49B, § 15(g) (1999); Miss. Code Ann. § 43-6-15 (2000); Utah Code Ann. § 34A-5-102(5) (2000); Va. Code Ann. § 51.5-3 (Michie 2000).

[28] *See, e.g.*, *Amos* v. *Maryland Dep't of Pub. Safety and Correctional Servs.*, 178 F.3d 212, 223 (4th Cir. 1999) (declining to address whether Congress properly invoked its Commerce Clause authority in enacting the ADA and making it applicable to state prisons after concluding that the statute was a valid exercise of Congress's Section 5 power), *vacated*

Title II of the ADA is invalid in its entirety because it is not within Congress's power under the Commerce Clause or the Spending Clause. *Amici* believe that Title II will be sustained on Commerce Clause grounds, but recognize that the issue will engender much litigation and may ultimately reach this Court. And were the States to prevail in invalidating Title II of the ADA, the protections afforded to individuals with disabilities would be severely undermined. Accordingly, the stakes are significant in this case and invalidation of the ADA's damages remedy against the States would have profound adverse consequences for persons with disabilities.

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without opinion (Dec. 28, 1999); *see also Pennsylvania Dep't of Corrections* v. *Yeskey*, 524 U.S. 206, 210-11 (1998) (declining to address petitioners' argument that application of Title II of the ADA to state prisons is not a constitutional exercise of Congress's power under either the Commerce Clause or Section 5 because petitioners did not raise the argument below). *Cf. Bradley* v. *Arkansas Dep't of Educ.*, 189 F.3d 745, 757-58 (8th Cir.) (granting petition for rehearing en banc to consider whether § 504 of the Rehabilitation Act is unconstitutional as applied to the States because it exceeds Congress's spending power), *vacated in part, reh'g en banc granted in part sub. nom. Jim C.* v. *Arkansas Dep't of Educ.*, 197 F.3d 958 (8th Cir. 1999).

CONCLUSION

For the foregoing reasons, the decision below should be affirmed.

Respectfully submitted,

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APPENDIX

	ALABAMA	COMMENTS
Prohibits employment discrimination based upon disability	Ala. Admin. Code r. 670-x-4-.01*	Both in 1990 and today, r. 670-x-4-.01 did not apply to the broad category of state employees exempted from coverage, in r. 670-x-3-.01(f)(3), including, *inter alia*, all state university employees, elected officials, and all "inmate help" in state correctional facilities. Both in 1990 and today, § 21-7-8 of the Alabama Code mandated employers to offer publicly-funded employment only to physically disabled persons "on the same terms and conditions" as the "able-bodied." Both in 1990 and today, neither provision contained a reasonable accommodation requirement.

* Applies to state employees only.

Applicable to the State and other public employers	Ala. Admin. Code r. 670-x-4-.01	
Applicable to the State pre-1990**	Ala. Admin. Code r. 670-x-4-.01 (1981)	
Equitable and monetary remedies available	Ala. Admin. Code r. 670-x-4-.03	Both in 1990 and today, r. 670-x-4-.03 required review before the State Personnel Board. Both in 1990 and today, neither r. 670-x-.01 nor § 21-7-8 provide for a private right of action in the Alabama courts.
State policies advancing the hiring of persons with disabilities	Ala. Code § 21-7-8 (1975), § 21-5-1 (1965), § 36-26-16	
State policies requiring accessibility and accommodation	§§ 21-4-1 (1965), 21-7-2, 21-7-3 (1975)	Both in 1990 and today, §§ 21-4-1, 21-7-2, and 21-7-3 applied only to those with a physical disability.

** Date indicated is the year the law both applied to the State and prohibited discrimination on the basis of disability.

State policies favoring de-institutionalization	§§ 22-52-37 (a)(7) (1975), 38-9-6(c) (1977), 22-52-10.1 (1977)	Both in 1990 and today, § 22-52-37 applied only to involuntary commitment proceedings for persons with mental disorders found to pose a "a real and present threat of substantial harm" to themselves or others. Both in 1990 and today, § 38-9-6 applied only to protective placement petitions for adults deemed unable to provide for their own protection from abuse or neglect.

	ALASKA	COMMENTS
Prohibits employment discrimination based upon disability	Alaska Stat. § 18.80.220	
Applicable to the State and other public employers	§ 18.80.300 (4), (16)	
Applicable to the State pre-1990	§§ 18.80.220, 18.80.300(4), (16) (1975)	
Equitable and monetary remedies available	§§ 22.10.020(i), 18.80.130	
State policies advancing the hiring of persons with disabilities	§§ 18.80.200 (1987), 23.15.220 (1960)	

State policies requiring accessibility and accommodation	§§ 35.10.015 (1966), 11.76.130 (1987), 18.80.230 (1965)	In both 1990 and today, § 35.10.015 applied only to public buildings – not all places of public accommodation. In both 1990 and today, § 18.80.230 provided no reasonable accommodation requirement, forbidding only the outright denial of use. Alaska Commission on Human Rights does not have the authority to award compensatory or punitive damages to complainants in cases of public accommodation discrimination. *See* *McDaniel* v. *Cory*, 631 P.2d 82 (Alaska 1981).
State policies favoring de-institutionalization	§ 47.30.735(d) (1981)	Both in 1990 and today, this statute applied only to involuntary commitment proceedings for an individual who is "mentally ill and as a result is likely to cause harm to [self] or others or is gravely disabled."

	ARIZONA	COMMENTS
Prohibits employment discrimination based upon disability	Ariz. Rev. Stat. § 41-1463.B1	Both in 1990 and today, statute did not cover mental impairments. § 41-1461(4). In 1990, statute did not cover those with a "record of" or "regarded as" having a physical or mental impairment. § 41-1461(4).
Applicable to the State and other public employers	§§ 41-1461.2, -1461.6	
Applicable to the State pre-1990	§§ 41-1463.B1, 41.1461.2, -1461.6 (1985)	
Equitable and monetary remedies available	§ 41-1481.D, .G	Both in 1990 and today, no compensatory damages were available.
State policies advancing the hiring of persons with disabilities	Exec. Order 89-7 (1989), 92-2 (1992)	

State policies requiring accessibility and accommodation	§§ 41-1492.01 (1967), 11-1024 (1965)	In 1990, § 41-1492.01 had not been enacted. In 1990 and today, these statutes did not cover state services, programs or activities.
State policies favoring de-institutionalization	§ 36-540.B (1983)	Both in 1990 and today, this statute applied only to involuntary commitment proceedings for persons with mental disorders found to pose a danger to themselves or others or who are persistently, acutely, or gravely disabled and in need of treatment.

	ARKANSAS	COMMENTS
Prohibits employment discrimination based upon disability	Ark. Code § 16-123-107(a)(1); Exec. Order 93-1 (1993)	In 1990, there was no prohibition against employment discrimination based on disability. Ark. Civil Rights Act, §§ 16-123-101 et seq. was not enacted until 1993. Definition of "disability" does not cover those with "record of" or "regarded as" having a disability. § 16-123-102(3).
Applicable to the State and other public employers	Exec. Order 93-1 (1993)	Exec. Order 93-1 does not cover employment discrimination based on disability; its purpose is to create a Health Care Reform Task Force to provide recommendations to the Government regarding Federal health care reforms.

Applicable to the State pre-1990	Exec. Order 86-1 (1985) (voluntary enforcement)	Exec. Order 86-1 (1990) is merely a general order requiring all state agencies to implement general personnel grievance procedures.
Equitable and monetary remedies available	§§ 16-123-107(c), 19-10-208; Exec. Order 93-1 (1993)	
State policies advancing the hiring of persons with disabilities	§ 20-14-301(b) (1973); § 22-3-1303 (1969)	Both in 1990 and today, § 20-14-301(b) covered only those with physical disabilities. Both in 1990 and today, § 22-3-1303 was limited to preferences for "blind persons operating vending facilities on state property."

State policies requiring accessibility and accommodation	§§ 27-15-301, -306 (1985), 20-14-303 (1973)	In both 1990 and today, § 20-14-202(a) was limited to the physically disabled and included no reasonable accommodation provision. § 20-14-301(a) is a policy statement regarding "equal rights and privileges" for those with physical disabilities with respect to public accommodations. Both in 1990 and today, these statutes did not explicitly cover state services, programs, and activities.
State policies favoring de-institutionalization	§ 20-47-214(c) (1979)	Both in 1990 and today, this statute applied only to involuntary commitment proceedings for persons with mental disorders found to pose a danger to themselves or others.

	CALIFORNIA	COMMENTS
Prohibits employment discrimination based upon disability	Calif. Gov't Code § 12940(a)	In 1990, statute did not cover those with mental illness. In 1990, statute did not cover those with "record of" (except for those diagnosed with cancer, § 12926(f)) or "regarded as" having a disability. § 12926(h).
Applicable to the State and other public employers	§ 12926(d)	
Applicable to the State pre-1990	§§ 12940(a), 12926(d) (1973)	
Equitable and monetary remedies available	§ 12960; 22 Cal. 4th 147, 166-167 (2000)	
State policies advancing the hiring of persons with disabilities	§§ 19230, 19232 (1977); Calif. Educ. Code § 44100 (1977)	

State policies requiring accessibility and accommodation	Gov't Code §§ 4450 (1968), 4450.5 (1984); Calif. Civ. Code §§ 54, 54.1 (1968), 51 (1905)	In 1990, bar against discrimination in public accommodations did not apply to those with mental impairments. In 1990, there was no bar against discrimination in provision of public services, programs, and activities. Cal. Gov't Code § 11135.
State policies favoring de-institutionalization	Calif. Welf. & Inst. Code §§ 5354 (1967), 5325.1 (1978)	Cal. Welf. & Inst. Code § 5354 deals solely with conservatorship proceedings for "gravely disabled persons."

	COLORADO	COMMENTS
Prohibits employment discrimination based upon disability	Colo. Rev. Stat. § 24-34-402(1)(a)-(b)	Both in 1990 and today, this statute did not cover mental disabilities. *See AT&T Techs., Inc.* v. *Royston*, 772 P.2d 1,182 (Colo. Ct. App. 1989).
Applicable to the State and other public employers	§ 24-34-401(3)	
Applicable to the State pre-1990	§§ 24-34-402(1)(a)-(b), 24-34-401(3) (1977)	
Equitable and monetary remedies available	§§ 24-34-306, 24-34-405	Both in 1990 and today, no compensatory damages were available.
State policies advancing the hiring of persons with disabilities	§§ 24-34-801 (1979), 26-8-105(d) (1963)	
State policies requiring accessibility and accommodation	§§ 9-5-101 to-104 (1965), 24-34-801 (1971), 24-34-601 (1971)	

State policies favoring de-institutionalization	§§ 27-10-101 (1973), 27-10.5-101 (1975)

CONNECTICUT*	COMMENTS	
Prohibits employment discrimination based upon disability	Conn. Gen. Stat. § 46a-60(1)	
Applicable to the State and other public employers	§§ 46a-51(10), 46a-69 to -78	
Applicable to the State pre-1990	§§ 46a-60(1), 46a-51(10); former §§ 4-61c to 4-61k (1973)	
Equitable and monetary remedies available	§ 46a-86(b)	Both in 1990 and today, statute did not provide for emotional distress damages nor for recovery of attorneys' fees. *See Bridgeport Hosp.* v. *Commission on Human Rights and Opportunities*, 653 A.2d 782 (Conn. 1995).

*Conn. Const. art. I, § 20 prohibits denial of equal protection of laws, discrimination and segregation based on physical or mental disability.

State policies advancing the hiring of persons with disabilities	§§ 46a-7 (1977), 46a-70(a) (1973), 31-136 (1957), 46a-70(b)-(c) (1973), 31-138 (1957)	
State policies requiring accessibility and accommodation	§§ 29-269 (1967), 29-271 (1975); § 46a-64 (1973)	In 1990, § 46a-64(b)(3) contained express exclusion of reasonable accommodation requirement.
State policies favoring de-institutionalization	§ 17a-498(c) (orig. § 17-178(c) (1976))	

	DELAWARE	COMMENTS
Prohibits employment discrimination based upon disability	Del. Code Title 19, § 724	
Applicable to the State and other public employers	§ 722(2)	
Applicable to the State pre-1990	§§ 724, 722(2) (1987)	
Equitable and monetary remedies available	§ 712(j),(k), and (g)	Both in 1990 and today, there were no compensatory damages available.
State policies advancing the hiring of persons with disabilities	Title 19 § 721 (1987); Title 16 § 9501(b) (1953)	Both in 1990 and today, § 9501(b) did not cover those with mental impairments.

State policies requiring accessibility and accommodation	Title 29 §§ 7301 to 7306; Title 16 § 9502 (1971); Title 6 § 4504	Both in 1990 and today, § 9502 limited protection to those with a physical disability. Both in 1990 and today, § 4504 contained no explicit obligation to make reasonable accommodations. Both in 1990 and today, under § 4504, there was no private right of action. Both in 1990 and today, these statutes did not explicitly cover state services, programs, and activities.
State policies favoring de-institutionalization	Title 16 § 5010 (1975)	Both in 1990 and today, statute applied only to involuntary civil commitment proceedings for mentally ill persons.

	FLORIDA	COMMENTS
Prohibits employment discrimination based upon disability	Fla. Stat. §§ 760.10, 110.105(2), 110.233(1)	In 1990, there was no accommodation requirement in employment. Also, an employer can discriminate against physically disabled person if disability "prevents the satisfactory performance of the work involved." § 413.08. Both in 1990 and today, § 110.105 prohibited discrimination in public employment unless "physical requirement constitutes a bona fide occupational qualification necessary to proper and efficient administration."
Applicable to the State and other public employers	§§ 760.02(6)-(7), 110.233(1), 110.105(2) (1977)	

Applicable to the State pre-1990	§§ 110.105(2), 760.10, 760.02(6)-(7), 110.233(1) (1977)	
Equitable and monetary remedies available	§§ 760.07, 760.11(5)	
State policies advancing the hiring of persons with disabilities	§ 413.08(3) (1971), § 413.393(1)(i) (1994)	In 1990, there was no state policy "advancing" the hiring of disabled persons, who could be refused employment if "disability prevents the satisfactory performance of the work involved." § 413.08. In 1990, there was no state policy "advancing" the hiring of persons with mental disabilities.

State policies requiring accessibility and accommodation	§ 553.503 (1974 (*see former* § 553.46)); § 413.08 (1949)	Both in 1990 and today, only those with physical disabilities had equal rights to public accommodations, but no requirement to modify or provide any service to a higher degree of accommodation than is required for a person without disability. § 413.08. Both in 1990 and today, these statutes did not explicitly cover services, programs or activities.
State policies favoring de-institutionalization	§ 394.467(1) (b) (1982)	Both in 1990 and today, this provision applied only to involuntary civil commitment proceedings for mentally ill persons who are dangerous or incapable of surviving with "available alternative services."

	GEORGIA	COMMENTS
Prohibits employment discrimination based upon disability	Ga. Code §§ 34-6A-4, 45-19-29	Both in 1990 and today, § 34-6A-4 limited coverage of mental impairments to mental retardation and learning disabilities. § 34-6A-2(7)(B). Both in 1990 and today, § 34-6A-4 did not cover those "regarded as" having a disability. § 34-6A-2(3). Both in 1990 and today, § 34-6A-4(a) contained explicit rejection of reasonable accommodation requirement.
Applicable to the State and other public employers	§§ 34-6A-2(2), 45-19-22(5) (1978)	
Applicable to the State pre-1990	§§ 34-6A-4, 34-6A-2(2), 45-19-29, 45-19-22(5) (1978)	
Equitable and monetary remedies available	§§ 34-6A-6, 45-19-38	

State policies advancing the hiring of persons with disabilities	§ 30-1-2 (1975)	
State policies requiring accessibility and accommodation	§§ 30-3-3 (1984), 30-4-1 (1955)	Both in 1990 and today, § 30-3-3 applied only to government buildings. Both in 1990 and today, § 30-4-1 limited coverage to those with physical impairments. Both in 1990 and today, these statutes did not explicitly cover public services, programs, and activities.
State policies favoring de-institutionalization	§ 37-3-162(a) (*see also* § 88-502.4 (1978))	Both in 1990 and today, these provisions were limited to the treatment of the mentally ill.

	HAWAII	COMMENTS
Prohibits employment discrimination based upon disability	Haw. Rev. Stat. §§ 78-2, 378-2(1)(A)	Both in 1990 and today, § 378-3(3) stated that employers may refuse to hire or discharge any individual "for reasons relating to the ability of the individual to perform the work in question."
Applicable to the State and other public employers	§§ 78-2, 378-1	
Applicable to the State pre-1990	§§ 378(2), 378-1, 78-2 (1980)	
Equitable and monetary remedies available	§ 378-5(b)	
State policies advancing the hiring of persons with disabilities	§ 78-2 (1967)	
State policies requiring accessibility and accommodation	§§ 103-50 (1965), 347-13 (1945), 489-3 (1986)	

State policies favoring de-institutionalization	§ 334-60.2(3) (orig. § 334-60 (1976))	Both in 1990 and today, this statute applied only to involuntary civil commitment proceedings for mentally ill persons who are dangerous or gravely disabled.

	IDAHO	COMMENTS
Prohibits employment discrimination based upon disability	Idaho Code § 67-5909(1)	
Applicable to the State and other public employers	§ 67-5902(6)(b)	
Applicable to the State pre-1990	§§ 67-5909(1), 67-5902(6)(b) (1988)	
Equitable and monetary remedies available	§§ 67-5907, 67-5908	
State policies advancing the hiring of persons with disabilities	§ 56-707(1) (1969)	
State policies requiring accessibility and accommodation	§§ 39-3201 to -3210 (1967), 56-702 (1969), 56-703 (1969)	Both in 1990 and today, these statutes did not cover mental disabilities. Both in 1990 and today, these statutes did not explicitly cover state services, programs, and activities.

State policies favoring de-institutionalization	§ 66-329(k)(2) (1981)	Both in 1990 and today, statute applied only to involuntary civil commitment proceedings for mentally ill persons who are dangerous or gravely disabled.

	ILLINOIS*	COMMENTS
Prohibits employment discrimination based upon disability	775 Ill. Comp. Stat. §§ 5/1-103(Q), 5/2-102(A)	Both in 1990 and today, statutory definition of handicap was limited to characteristics that were unrelated to ability to perform duties of particular job. § 5/1-103(l). Therefore, there is effectively no statutory accommodation requirement. Accommodation requirements in regulations do not include job reassignment.
Applicable to the State and other public employers	§§ 5/1-103(L)	
Applicable to the State pre-1990	§§ 5/1-103(L), (Q) (1979)	

*Ill. Const. art. I, § 19 prohibits employment discrimination against persons with physical or mental disabilities

Equitable and monetary remedies available	§ 5/8A-104	Both in 1990 and today, no private right of action until exhaust administrative procedures (file complaint with Department of Human Rights, appeal to Commission), and judicial review only for abuse of discretion.
State policies advancing the hiring of persons with disabilities	§§ 30/5 (1969), 5/1-102(A) (1980), 5/1-102 (F)-(G) (1980); 20 Ill. Comp. Stat. § 415/19a (1955), § 4007/1 (1992)	Both in 1990 and today, § 30/5 provided employment on same terms and conditions as able-bodied only for persons with physical disability, unless disability "prevents performance of the work involved." No coverage for those with mental or developmental disabilities.

State policies requiring accessibility and accommodation	410 Ill. Comp. Stat. § 2511 (1985); 775 Ill. Comp. Stat. §§ 30/3 (1969), 5/5-102 (1986)	Both in 1990 and today, 410 Ill. Comp. Stat. § 25 imposed minimum standards of accessibility only for persons with physical disabilities. There is no private right of action under this statute. § 30/3 contains no explicit obligation to make reasonable accommodations, and does not apply to those with mental or developmental disabilities.
State policies favoring de-institutionalization	405 Ill. Comp. Stat. § 5/3-811 (1979)	Both in 1990 and today, this statute applied only to involuntary civil commitment proceedings for dangerous mentally ill persons.

	INDIANA	COMMENTS
Prohibits employment discrimination based upon disability	Ind. Code § 22-9-5-19	§ 22-9-5-19 was not in effect in 1990. In 1990, the relevant statute was § 22-9-1-3 et seq. Both in 1990 and today, the definition of disability did not cover those with a "record of" or "regarded as" having a disability. § 22-9-1-3(r). Both in 1990 and today, there was no reasonable accommodation requirement. § 22-9-1-13.
Applicable to the State and other public employers	§§ 22-9-5-10, 22-9-5-15	
Applicable to the State pre-1990	§§ 22-9-1-3 (1975)	
Equitable and monetary remedies available	§§ 22-9-1-6(1), 22-9-1-17	Both in 1990 and today, § 22-9-1-17(c) prohibited the use of jury trials.

State policies advancing the hiring of persons with disabilities	§§ 16-32-3-1 (1969), 16-32-3-5 (1969), 22-9-1-2 (1975), 4-15-12-2 (1977)	
State policies requiring accessibility and accommodation	§§ 22-13-4-1(1) (1987), 16-32-3-1 (1969)	Both in 1990 and today, these statutes did not explicitly cover state services, programs, and activities.
State policies favoring de-institutionalization	§ 12-26-6-8 (orig. 16-14-9.1-9 (1975))	Both in 1990 and today, this statute applied only to involuntary civil commitment proceedings for dangerous mentally ill persons.

	IOWA	COMMENTS
Prohibits employment discrimination based upon disability	Iowa Code § 216.6(1)(a)	In 1990, employment discrimination statute was § 601A.6 (current version at § 216.6). Both in 1990 and today, the statutory definition of "disability" did not cover those with a "record of" (except for those with a positive HIV diagnosis) or "regarded as" having a disability.
Applicable to the State and other public employers	§ 216.2(7), (11)	
Applicable to the State pre-1990	§§ 216.2(7), (11), 216.6 (1)(a) (1972)	Inaccurate cite. In 1990, employment discrimination provision was found at § 610A.6.
Equitable and monetary remedies available	§§ 216.15, 216.16	

State policies advancing the hiring of persons with disabilities	§§ 216C.2 (1967), 216C.1 (1967), 19B.2 (1986), 19B.11 (1986)	
State policies requiring accessibility and accommodation	§§ 104A (1965), 216C.3 (1959), 213C.1, 213C.4 (1967), 216.7 (1972)	
State policies favoring de-institutionalization	§§ 229.14(3) (1975), 225C.14 (1981)	Both in 1990 and today, § 229.14 applied only to "seriously mentally impaired persons."

	KANSAS	COMMENTS
Prohibits employment discrimination based upon disability	Kan. Stat. § 44-1009(1)	In 1990, statute did not cover those with mental impairments. § 44-1002. In 1990, § 44-1002 did not cover those with a "record of" or "regarded as" having a disability.
Applicable to the State and other public employers	§ 44-1002(b)	
Applicable to the State pre-1990	§§ 44-1002(b), 44-1009(1) (1974)	
Equitable and monetary remedies available	§§ 44-1011, 44-1005(k)	Both in 1990 and today, § 44-1005(k) capped awards for emotional damages at $2,000.

State policies advancing the hiring of persons with disabilities	§§ 39-1105 (1969), 44-1001 (1974)	Both in 1990 and today, § 39-1105 applied only to those with a physical disability. In 1990, § 44-1001 applied only to those with a physical disability.
State policies requiring accessibility and accommodation	§§ 58-1301 (1968), 39-1101 (1969), 44-1009(c) (1974)	In 1990, § 58-1301 applied only to individuals with physical disabilities. Both in 1990 and today, § 39-1101 applied only to those with a physical disability and provided for no remedies for violations. In 1990, § 44-1009(c) also limited protection to those with a physical disability.
State policies favoring de-institutionalization	§ 59-2966 (orig. § 59-2917(f) (1976)); § 39-1603 (1990)	Both in 1990 and today, these statutes applied only to those with mental illness.

	KENTUCKY	COMMENTS
Prohibits employment discrimination based upon disability	Ky. Rev. Stat. §§ 207.150, 344.040	In 1990, § 344.040 did not apply to disabilities. In 1990, this statute did not cover those with mental disabilities or communicable diseases. §§ 207.130, 207.140(2). In 1990, this statute did not cover those with a "record of," or who were "regarded as" having, a disability. § 207.130. In 1990, there was no reasonable accommodation requirement. Both in 1990 and today, employer could discriminate if physical disability

		interfered with person's ability adequately to perform assigned job duties. Employer not required to modify physical facilities or exercise more caution for disabled person. § 207.150.
Applicable to the State and other public employers	§§ 207.130 (1), (3); 344.010, 344.030(2)	In 1990, §§ 344.010, 344.030(2) did not apply to disabilities.
Applicable to the State pre-1990	§§ 207.150, 207.130(1), (3) (1976)	
Equitable and monetary remedies available	§§ 207.210(3), (4), 344.230, 344.240, 344.450	In 1990, §§ 344.230, 344.240, 344.450 did not apply to disabilities. Both in 1990 and today, Department of Workplace Standards provided only injunctive relief. § 207.210.
State policies advancing the hiring of persons with disabilities	§§ 344.020(1)(b) (1992), 12.450 to 12.465 (1996)	In 1990, §§ 344.020 did not apply to disabilities. §§ 12.450-12.465 were not in effect in 1990.

State policies requiring accessibility and accommodation	§§ 198B.260 (1980), 258.500 (1966)	Both in 1990 and today, § 258.500 applied only to blind, deaf, and "mobility-impaired" persons with guide dogs. Both in 1990 and today, these statutes did not explicitly cover services, programs or activities.
State policies favoring de-institutionalization	§ 202A.026 (1982)	Both in 1990 and today, applied only to involuntary civil commitment proceedings for mentally ill persons found to pose a danger or threat of danger to themselves or others.

	LOUISIANA*	COMMENTS
Prohibits employment discrimination based upon disability	La. Rev. Stat. § 23.323(A)-(B)	§ 23.322 et seq. did not apply to employment discrimination in 1990. Both in 1990 and today, the definition of disability did not cover mental illness. § 46:2253 (1990), § 23:322 (2000). Both in 1990 and today, statute permits discrimination by employer based on any "cosmetic disfigurement" or "anatomical loss of body systems." § 46:2253(2) (1990), § 23:322(6) (2000). Both in 1990 and today, employer not required to make architectural modifications in excess of the amount allowed as a federal deduction.

*La. Const. art. I, § 12 prohibits public accommodations and public areas from discriminating based on "physical condition."

		§ 46:2253(19) (1990), § 23:322(9) (2000). Both in 1990 and today, private employers not required to incur "any additional costs in the hiring or the promotion of a [disabled] person." § 46:2253(19) (1990), § 23:322(9) (2000).
Applicable to the State and other public employers	§ 23:302(2)	
Applicable to the State pre-1990	§§ 46:2254(B)-(E), 46:2253 (1980)	
Equitable and monetary remedies available	§ 23:303	
State policies advancing the hiring of persons with disabilities	§ 51:2231.A (1992)	
State policies requiring accessibility and accommodation	§§ 40:1731 to 1743 (1977), 46:1953 (1975), 49:146 (1987)	Both in 1990 and today, § 49:146 was simply a policy of non-discrimination with no affirmative accommodation requirement.

State policies favoring de-institutionalization	§ 28:55.E(1) (1977)	Both in 1990 and today, this provision applied to involuntary civil commitment proceedings only for dangerous mentally ill persons.

	MAINE	COMMENTS
Prohibits employment discrimination based upon disability	Me. Rev. Stat. Title 5 § 4572.1	In 1990, this statute did not cover those with a "record of," or who were "regarded as" having, a disability. § 4553.
Applicable to the State and other public employers	§ 4553.4, .7	
Applicable to the State pre-1990	§§ 4572.1, 4553.4, .7 (1973)	
Equitable and monetary remedies available	§§ 4612, 4613	
State policies advancing the hiring of persons with disabilities	Title 26 § 2006.5-C (1969)	
State policies requiring accessibility and accommodation	Title 5 §§ 4593 to 4595 (1973); Title 17 § 1312 (1971); Title 25 § 2701 (1967)	In Title 17 § 1312, there is no explicit obligation to make reasonable accommodations except the right to use guide dogs. In 1990, these statutes did not explicitly cover services, programs or activities.

State policies favoring de-institutionalization	Title 34-B § 3864.5.E(2) (1983)	Both in 1990 and today, this provision applied to involuntary civil commitment proceedings for only mentally ill persons who pose a likelihood of serious harm.

	MARYLAND	COMMENTS
Prohibits employment discrimination based upon disability	Md. Ann. Code Art. 49B § 16	Both in 1990 and today, the statute did not cover those with a "record of," or "regarded as" having, a disability. § 15. Both in 1990 and today, employer could discriminate based on a disability that "reasonably preclude[s] the performance of the employment." § 16(a)(1).
Applicable to the State and other public employers	§§ 7, 15(b), 17A	
Applicable to the State pre-1990	§§ 7, 15(b), 16 (1974)	

Equitable and monetary remedies available	§ 11(e)	Both in 1990 and today, there was no private right of action beyond the administrative context. §§ 10, 11. Both in 1990 and today, no compensatory damages were available.
State policies advancing the hiring of persons with disabilities	Art. 30 § 33 (1966)	Both in 1990 and today, this policy was limited to the blind and deaf, and only encouraged employment "unless it is shown that the particular handicap prevents the performances of the work involved."
State policies requiring accessibility and accommodation	Md. Code Ann, State Fin. & Proc. § 2-509 (1985); Md. Ann. Code art. 83B § 6-102 (1974), art. 30 § 33 (1966), art. 49B § 5 (1974)	Both in 1990 and today, Art. 30 § 33 was limited to the blind and deaf. Both in 1990 and today, these statutes did not explicitly cover services, programs or activities.

State policies favoring de-institutionalization	Md. Health-Gen. § 10-632 (e)(2)(v) (1982)	Both in 1990 and today, this provision applied only to involuntary civil commitment proceedings for dangerous mentally ill persons.

MASSACHUSETTS*		COMMENTS
Prohibits employment discrimination based upon disability	Mass. Gen. Laws ch. 151B § 4(16)	
Applicable to the State and other public employers	§ 1(5)	
Applicable to the State pre-1990	§§ 1(5), 4(16) (1983)	
Equitable and monetary remedies available	§§ 5, 6	Both in 1990 and today, attorneys' fees were not available.
State policies advancing the hiring of persons with disabilities	ch. 6 § 105-106 (1958)	
State policies requiring accessibility and accommodation	ch. 22 § 13A (1967); ch. 143 § 3W (1973); ch. 272 §§ 92A, 98 (1975)	Both in 1990 and today, these statutes did not explicitly cover services, programs or activities.

*Mass. Const. Amendment art. 114 prohibits discrimination against persons with disabilities in a program or activity within the Commonwealth.

State policies favoring de-institutionalization	ch. 123 § 8 (1978)	Both in 1990 and today, this provision applied only to involuntary civil commitment proceedings for dangerous mentally ill persons.

	MICHIGAN	COMMENTS
Prohibits employment discrimination based upon disability	Mich. Comp. Laws §§ 37.1102, 37.1202	In 1990, these statutes did not cover those "regarded as" having an impairment. § 37.1103. In 1990, coverage for mental disabilities was limited to "mental retardation which is significantly subaverage general intellectual functioning and to a mentally ill restored condition." § 37.1103. In 1990, definition of handicap was limited to characteristics that were unrelated to ability to perform duties of particular job. § 37.1103. Therefore, there was effectively no reasonable accommodation requirement.

Applicable to the State and other public employers	§§ 37.1103(g), 37.1201(b)	
Applicable to the State pre-1990	§§ 37.1102, 37. 1103(g), 37.1202 (1976)	
Equitable and monetary remedies available	§§ 37.1606, 37.2605	
State policies advancing the hiring of persons with disabilities	Exec. Order No. 1994-16 (May 23, 1994)	In 1990, there were no policies advancing the hiring of persons with disabilities.

State policies requiring accessibility and accommodation	§§ 125.1351 to 1356 (1966), 37.1302 (1976), 37. 1102 (1976)	Both in 1990 and today, § 37.1302 granted only equal enjoyment of public accommodation, and only if disability "is unrelated to the individual's ability to utilize and benefit from the accommodations." Therefore, there is effectively no reasonable accommodation requirement. Both in 1990 and today, § 125.351 et seq. required accessibility only for "physically limited" persons.
State policies favoring de-institutionalization	§ 330.1469a (1974)	Both in 1990 and today, this provision applied only to civil commitment proceedings for mentally ill persons, and only where no less restrictive alternatives are available.

	MINNESOTA	COMMENTS
Prohibits employment discrimination based upon disability	Minn. Stat. § 363.03	In 1990, forms of reasonable accommodations did not include job reassignment.
Applicable to the State and other public employers	§ 363.01(17), (28)	
Applicable to the State pre-1990	§§ 363.03, 363.01 (1973)	
Equitable and monetary remedies available	§ 363.071	
State policies advancing the hiring of persons with disabilities	§ 256C.01 (1969), § 116J.874	Both in 1990 and today, § 256C.01 applied only to persons with physical disabilities. § 116J.874 was not in effect in 1990.

State policies requiring accessibility and accommodation	§§ 471.465 to .468 (1971), 256C.02 (1969), 363.03 (1975)	Both in 1990 and today, § 256C.02 applied only to persons with physical disabilities, and contained no explicit obligation to make reasonable accommodations except for use of service dogs.
State policies favoring de-institutionalization	§ 253B.09 (1982)	Both in 1990 and today, this provision applied only to involuntary civil commitment proceedings for mentally ill persons.

	MISSISSIPPI	COMMENTS
Prohibits employment discrimination based upon disability	Miss. Code § 25-9-149*	§ 25-9-149 is merely a policy statement. Both in 1990 and today, there was no coverage for persons with mental disabilities. § 43-6-15. Both in 1990 and today, there was no coverage for those with a "record of" or "regarded as having" a disability. § 43-6-15. Both in 1990 and today, employers could discriminate if "disability shall materially affect the performance of the work required by the job." Therefore, there was no reasonable accommodation requirement. § 43-6-15.

*Only applicable to persons seeking public employment

Applicable to the State and other public employers	§ 25-9-149	
Applicable to the State pre-1990	§ 25-9-149 (1984)	
Equitable and monetary remedies available	§§ 25-9-131, 25-9-132	Both in 1990 and today, there were no monetary remedies available.
State policies advancing the hiring of persons with disabilities	§ 43-6-15 (1974)	Both in 1990 and today, this policy applied only to persons with physical disability.
State policies requiring accessibility and accommodation	§§ 43-6-101 to -124 (1972), 43-6-5 (1972)	Both in 1990 and today, these statutes did not explicitly cover services, programs or activities.
State policies favoring de-institutionalization	§ 41-21-73(4) (orig. § 41-21-75 (1975))	Both in 1990 and today, this provision applied only to involuntary civil commitment proceedings for mentally ill persons.

	MISSOURI	COMMENTS
Prohibits employment discrimination based upon disability	Mo. Rev. Stat. § 213.055(1)	
Applicable to the State and other public employers	§ 213.010(7)	
Applicable to the State pre-1990	§§ 213.010(7), 213.055(1) (1978)	
Equitable and monetary remedies available	§ 213.076	Both in 1990 and today, there was no right to a jury trial. § 213.111.
State policies advancing the hiring of persons with disabilities	§§ 209.180 (1977), 286.200 (1977)	Both in 1990 and today, § 209.180 applied only to those with a visual disability.
State policies requiring accessibility and accommodation	§§ 8.610 to .657 (1967), 209.150 (1941), 213.065 (1986)	Both in 1990 and today, § 209.150 addressed the rights of only those with a physical disability, and only affirmative obligation was right to use guide dog.

State policies favoring de-institutionalization	§ 632.335.4 (1980)	Both in 1990 and today, this statute applied only to involuntary civil commitment proceedings for mentally ill persons who are likely to cause serious harm to self or others.

	MONTANA	COMMENTS
Prohibits employment discrimination based upon disability	Mont. Code §§ 49-2-303, 49-4-101, 49-3-201	In 1990, the definition of "disability" did not cover those with a "record of" or "regarded as" having an impairment. §§ 49-2-101, 49-3-101, 39-30-103. In 1990, there was no reasonable accommodation requirement. § 49-2-101. Both in 1990 and today, § 49-4-101 prohibited discrimination only against persons with physical disabilities.
Applicable to the State and other public employers	§ 49-3-201	
Applicable to the State pre-1990	§ 49-3-201 (1975)	
Equitable and monetary remedies available	§§ 49-2-506(b), 49-4-102, 49-3-309(b)	Both in 1990 and today, no private right of action until exhaust administrative remedies. § 49-2-509.

State policies advancing the hiring of persons with disabilities	§§ 49-4-202 (1971), 49-3-202 (1975), 39-30-101 to 102, -106 (1983); Mont. Admin. R. §§ 2.21.1412 to .1414 (1984)	Both in 1990 and today, § 49-4-202 did not apply to mental disabilities. This policy encouraged only the hiring of those with physical disabilities "on the same terms and conditions as the able-bodied, unless it is shown that the particular disability prevents the performance of the work involved."
State policies requiring accessibility and accommodation	Mont. Code §§ 50-60-201(4) (1969), 49-4-211 (1971), 49-2-304 (1974)	Both in 1990 and today, § 49-2-304 prohibited discrimination based on disability unless "distinction is based on reasonable grounds."
State policies favoring de-institutionalization	§ 53-21-127 (1975)	Both in 1990 and today, this provision applied only to civil commitment proceedings for mentally ill persons.

	NEBRASKA	COMMENTS
Prohibits employment discrimination based upon disability	Neb. Rev. Stat. §§ 48-1104, 48-1107.02	In 1990, these statutes did not cover those with a "record of" or "regarded as" having a disability. § 48-1102. In 1990, employer not required to provide accommodation unless it could be done at "de minimis expense" (§ 48-1102(8)).
Applicable to the State and other public employers	§§ 48-1102(2), 48-1126	
Applicable to the State pre-1990	§§ 48-1104, 48-1102(2) (1979)	
Equitable and monetary remedies available	§ 48-1119(4)	In 1990, no compensatory damages were available.
State policies advancing the hiring of persons with disabilities	§ 20-131 (1971)	Both in 1990 and today, State policy only for the employment of disabled persons "on the same terms and conditions as persons without disabilities."

State policies requiring accessibility and accommodation	§§ 81-5, 147 (1974), 20-127 (1971), 20-129 (1971)	Both in 1990 and today, in § 20-127, there was no explicit obligation to make reasonable accommodations. In 1990, § 81-5,147 did not relate to accessibility or accommodation requirements. Both in 1990 and today, these statutes did not explicitly cover services, programs or activities.
State policies favoring de-institutionalization	§ 83-1037 (1976)	Both in 1990 and today, applied only to involuntary civil commitment proceedings for dangerous mentally ill persons.

	NEVADA	COMMENTS
Prohibits employment discrimination based upon disability	Nev. Rev. Stat. §§ 281.370, 613.330	In 1990, the definition of "disability" in these statutes did not cover mental disabilities. In 1990, the definition of "disability" in these statutes did not cover those with a "record of" or "regarded as" having a disability. In 1990, there was no reasonable accommodation requirement. In 1990, employers could discriminate based upon a bona fide occupational qualification or if physical condition "would prevent proper performance of the work." § 613.350.
Applicable to the State and other public employers	§§ 281.370, 613.310(2), (5)	
Applicable to the State pre-1990	§§ 281.370, 613.330, 613.310(2), (5) (1971)	

Equitable and monetary remedies available	§§ 613.405, 613.420, 613.430, 233.170, 233.180	Both in 1990 and today, actual damages were not available in administrative procedures, and recovery for backpay was limited to two years after the most recent unlawful practice. § 233.170. Both in 1990 and today, private right of action only if Equal Rights Commission dismisses complaint. § 613.420.
State policies advancing the hiring of persons with disabilities	§ 284.012 (1969)	In 1990, this policy did not apply if "the particular disability prevents the proper performance of the work involved."
State policies requiring accessibility and accommodation	§§ 338.180 (1973), 651.070 (1969)	Both in 1990 and today, § 338.180 requires accessibility only if there is no "loss of function, space or facility where the general public is concerned." Both in 1990 and today, there was no explicit obligation to make reasonable accommodations. § 651.070. In 1990, provisions related to public services did not cover mental impairments.

State policies favoring de-institutionalization	§ 433A.310.3 (1975)	Both in 1990 and today, this provision applied only to involuntary civil commitment proceedings for dangerous mentally ill persons.

	NEW HAMPSHIRE	COMMENTS
Prohibits employment discrimination based upon disability	N.H. Rev. Stat. § 354-A:7	In 1990, there was no coverage for persons with mental illness. § 354-A:3. In 1990, there was no coverage for those with "record of" or "regarded as having" disability. § 354-A:3. Both in 1990 and today, there was no reasonable accommodation requirement. § 354-A:8 (1990), § 354-A:7 (2000).
Applicable to the State and other public employers	§ 354-A:2(VII)	
Applicable to the State pre-1990	§§ 354-A:2, 354-A:7 (1975)	
Equitable and monetary remedies available	§ 354-A:22	Both in 1990 and today, complainant must exhaust administrative remedies prior to seeking judicial review.

State policies advancing the hiring of persons with disabilities	§ 167-C:5 (1971)	Both in 1990 and today, this policy applied only to persons with physical disability.
State policies requiring accessibility and accommodation	§§ 275-C:14 (1977), 167-C:2 (1971), 155:39-b (1990)	In § 167-C:2, there is no explicit obligation to make reasonable accommodations.
State policies favoring de-institutionalization	§§ 135-C:57 (1986), 135C:40(v) (1975)	

	NEW JERSEY	COMMENTS
Prohibits employment discrimination based upon disability	N.J. Stat. Title 10 §§ 5-4.1, 5-12, 5-29.1	
Applicable to the State and other public employers	§ 5-5.e	
Applicable to the State pre-1990	§§ 5-4.1, 5-12, 5-29.1 (1972)	
Equitable and monetary remedies available	§ 5-13	
State policies advancing the hiring of persons with disabilities	§§ 30:6-17 (1964), 30:6-23 (1982), 11A:7-1 (1986)	
State policies requiring accessibility and accommodation	§§ 52:32-4 to –5 (1971), 10:5-4 (1972), 10:5-29 (1971)	

State policies favoring de-institutionalization	§§ 30:4-24.2(e) (1975), 30:4-27.11(e)(b) (1991), 30:6D-9 (1977)	Both in 1990 and today, § 30:4-24.2(e) applied only to persons with mental disability. Both in 1990 and today, § 30:6D-9 applied only to persons with developmental disabilities.

	NEW MEXICO	COMMENTS
Prohibits employment discrimination based upon disability	N.M. Stat. § 28-1-7	
Applicable to the State and other public employers	§ 28-1-2.A to .B	
Applicable to the State pre-1990	§§ 28-1-7, 28-1-2.A to .B (1973)	
Equitable and monetary remedies available	§ 28-1-10.J	Both in 1990 and today, this provision did not specify which remedies were available.
State policies advancing the hiring of persons with disabilities	§§ 28-7-7 (1967), 28-10-11 (1969), 28-10-1, 28-10-2 (1973)	Both in 1990 and today, § 28-7-7 applied only to the those with physical disability.
State policies requiring accessibility and accommodation	§§ 60-13-44(D) (1967), 28-7-3 (1967), 28-1-7(F) (1973)	

State policies favoring de-institutionalization	§ 43-1-11(c)(3) (1977)	Both in 1990 and today, this statute applied only to involuntary civil commitment proceedings for mentally ill persons who pose a likelihood of serious harm.

	NEW YORK	COMMENTS
Prohibits employment discrimination based upon disability	N.Y. Exec. Law § 296; N.Y. Civ. Serv. Law § 55	Both in 1990 and today, § 296 did not cover those with a "record of" or "regarded as" having a disability. § 292(21)(a). Both in 1990 and today, § 55 did not cover mental impairments.
Applicable to the State and other public employers	N.Y. Exec. Law § 292;* N.Y. Civ. Serv. Law § 55	
Applicable to the State pre-1990	N.Y. Exec. Law §§ 292, 296; N.Y. Civ. Serv. Law § 55 (1974)	
Equitable and monetary remedies available	N.Y. Exec. Law § 297(4)(c), (6), (9)	

**See Matter of Bd. of Higher Educ.* v. *Carter*, 14 N.Y.2d 138, 147 (1964).

State policies advancing the hiring of persons with disabilities	N.Y. Ct. Rules § 25.16 L. 1988 c. 261 § 62 (1988); N.Y. Civ. Serv. Law § 55-b (1977)
State policies requiring accessibility and accommodation	N.Y. Pub. Bldgs. Law §§ 50, 51 (1972); N.Y. Exec. Law § 296(2) and (2-a) (1974); N.Y. Civ. Rights Law § 47 (1976)
State policies favoring de-institutionalization	N.Y. Mental Hygiene Law § 9.27(d) (orig. § 31.27) (1972)

	NORTH CAROLINA	COMMENTS
Prohibits employment discrimination based upon disability	N.C. Gen. Stat. §§ 126-16, 168A-5	Both in 1990 and today, reasonable accommodation not required if cost of making changes over the course of disabled person's employment would exceed 5% of the employee's annual salary or annualized hourly wage. § 168A-3.
Applicable to the State and other public employers	§§ 126-16, 168A-3(2),(7)	
Applicable to the State pre-1990	§§ 168A-3(2),(7), 168A-5 (1985)	
Equitable and monetary remedies available	§§ 126-37, 168A-11	Both in 1990 and today, § 168A-11 provided for only declaratory or injunctive relief and backpay.

State policies advancing the hiring of persons with disabilities	§§ 143-422.2 (1977), 128-15.3 (1971), 168A-2 (1985), 128-15.3 (1971), 143B-403.1 to 403.2 (1977)	
State policies requiring accessibility and accommodation	§§ 168-2 (1973), 168-3 (1973), 168A-6 (1985)	
State policies favoring de-institutionalization	§ 122C-271 (1973)	Both in 1990 and today, § 122C-271 applied only to involuntary civil commitment proceedings for dangerous mentally ill or retarded persons.

	NORTH DAKOTA	COMMENTS
Prohibits employment discrimination based upon disability	N.D. Cent. Code § 14-02.4-03	
Applicable to the State and other public employers	§§ 14-02.4-02.6, 14-02.4-02.11	
Applicable to the State pre-1990	§§ 14-02.4-03, 14-02.4-02.6 (1983)	
Equitable and monetary remedies available	§§ 14-02.4-19 to -20	Both in 1990 and today, only injunctive relief and backpay were available.
State policies advancing the hiring of persons with disabilities	§ 25-13-05 (1967)	Both in 1990 and today, this policy applied only to persons with physical disabilities.
State policies requiring accessibility and accommodation	§§ 14-02.4-14 (1983), 25-13-02 (1967), 48-02-19 (1973)	Both in 1990 and today, § 25-13-02 applied only to the use of guide dogs.

State policies favoring de-institutionalization	§ 25-03.1-17 (1977)	Both in 1990 and today, this statute applied only to involuntary civil commitment proceedings for mentally ill persons who pose a serious risk of harm to self or others. Both in 1990 and today, the state was not required to create a less restrictive treatment program or facility. § 25-03.3-13.

	OHIO	COMMENTS
Prohibits employment discrimination based upon disability	Ohio Rev. Code § 4112.02	
Applicable to the State and other public employers	§§ 4112.01(A) (1)-(2)	
Applicable to the State pre-1990	§ 4112.01, .02 (1976)	
Equitable and monetary remedies available	§ 4112.02(N)	§ 4112.02(N) relates only to age discrimination claims. Both in 1990 and today, there was no right to a jury trial for suit against state.
State policies advancing the hiring of persons with disabilities	§§ 3304.38 (1996), 124.231(C) (1978)	
State policies requiring accessibility and accommodation	§§ 3781.111 (1965), 4112.02 (1976)	Both in 1990 and today, these statutes did not cover services, programs, or activities of public entities.

State policies favoring de-institutionalization	§ 5122.15(E) (1977)	Both in 1990 and today, this statute applied only to involuntary commitment of mentally ill persons who pose substantial risk of harm to self or others.

	OKLAHOMA	COMMENTS
Prohibits employment discrimination based upon disability	Okla. Stat. Title 25 § 1302, 74 § 840-2.9.A	In 1990, there was no reasonable accommodation requirement. § 1302.
Applicable to the State and other public employers	25 § 1301.1; 74 § 840-2.9.A	
Applicable to the State pre-1990	25 §§ 1301.1, 1302; 74 § 840-2.9.A (1981)	
Equitable and monetary remedies available	25 § 1901	
State policies advancing the hiring of persons with disabilities	74 § 9.30 (1957)	
State policies requiring accessibility and accommodation	61 § 11 (1965); 7 § 19.1 (1968); 25 § 1402 (1985)	
State policies favoring de-institutionalization	43A, § 5-416 (orig. 54.9(A), § 405(B)(1) (1980))	

	OREGON	COMMENTS
Prohibits employment discrimination based upon disability	Or. Rev. Stat. § 659.436	
Applicable to the State and other public employers	§§ 659.400(4), 659.010(6)	
Applicable to the State pre-1990	§ 659.425 (renumbered in 1997) (1973)	
Equitable and monetary remedies available	§§ 659.050 to .070	
State policies advancing the hiring of persons with disabilities	§§ 182.100 (1981), 410.710 (1989), 659.020 (1983), 659.025(2) (1981), 659.405 (1973)	
State policies requiring accessibility and accommodation	§§ 447.210 to 310 (1971), 346.610 to 660 (1967), 659.425(3) (1973)	In 1990, these statutes did not explicitly cover services, programs or activities.

State policies favoring de-institutionalization	§§ 427.031 (1979), 427.007 (1981)	Both in 1990 and today, these statutes applied only to those with mental retardation or other developmental disabilities.

PENNSYLVANIA COMMENTS

Prohibits employment discrimination based upon disability	43 Pa. Cons. Stat. § 955	
Applicable to the State and other public employers	§ 954(b)	
Applicable to the State pre-1990	§§ 955, 954(b) (1974)	
Equitable and monetary remedies available	§§ 962(c), 959	There is no right to a jury trial. *Wertz* v. *Chapman*, 741 A.2d 1272, 1274-79 (Pa. 1999).
State policies advancing the hiring of persons with disabilities	§ 952 (1974), 62 Pa. Cons. Stat. § 3207(d) (1994)	
State policies requiring accessibility and accommodation	71 Pa. Cons. Stat. §§ 1455.1 to 1455.3b (1965); 43 Pa. Cons. Stat. § 955(i) (1974)	Both in 1990 and today, statutes did not explicitly cover services, programs or activities.

State policies favoring de-institutionalization	50 § 7304(f) (1976)	Both in 1990 and today, this statute applied only to involuntary civil commitment of severely mentally disabled persons who pose clear and present danger to self or others.

	RHODE ISLAND*	COMMENTS
Prohibits employment discrimination based upon disability	R.I. Gen. Laws §§ 28-5-7, 36-4-50	
Applicable to the State and other public employers	§§ 28-5-6(6)(i), 36-4-50	
Applicable to the State pre-1990	§§ 28-5-7, 28-5-6(6)(i) (1973)	
Equitable and monetary remedies available	§ 28-5-24	In 1990, compensatory damages were not available.
State policies advancing the hiring of persons with disabilities	§§ 28-5.1-9 (1988), 25-2-13 (1971), 42-51-1 to 42-51-10 (1970)	
State policies requiring accessibility and accommodation	§§ 37-8-15 (1964), 40-9.1-1 (1975), 42-87-2 (1983)	In 1990, these statutes did not explicitly cover services, programs or activities.

*R.I. Const. art. I, § 2 prohibits State entities and those doing business in the State from discriminating against an otherwise qualified person solely based on disability.

State policies favoring de-institutionalization	§ 40.1-5-8(j) (orig. § 40.1-5-8(10)) (1974)	Both in 1990 and today, statute applied only to involuntary civil commitment proceedings for mentally ill persons who pose likelihood of serious harm.

	SOUTH CAROLINA	COMMENTS
Prohibits employment discrimination based upon disability	S.C. Code §§ 1-13-80(A), 1-13-85	In 1990, there was no reasonable accommodation requirement.
Applicable to the State and other public employers	§§ 1-13-30 (d),(e)	
Applicable to the State pre-1990	§§ 1-13-80(A), 1-13-30(d)-(e) (1983)	
Equitable and monetary remedies available	§§ 1-13-90(c)(16), 1-13-90(d)(9)	In 1990 and today, actual damages capped at $5,000. §§ 43-33-540, -550.
State policies advancing the hiring of persons with disabilities	§ 43-33-60 (1962)	Both in 1990 and today, this policy applied only to those with physical disabilities.
State policies requiring accessibility and accommodation	§§ 10-5-250 to 10-5-320 (1962), 10-5-330 (1983), 43-33-20 (1962), 43-33-10 (1962), 43-33-530 (1983)	

State policies favoring de-institutionalization	§§ 44-20-20 (1990), 44-20-390 (1990)	Both in 1990 and today, applied only to those with mental retardation or with head and spinal injuries who pose likelihood of serious harm or lack sufficient capacity to make responsible decisions regarding treatment.

	SOUTH DAKOTA	COMMENTS
Prohibits employment discrimination based upon disability	S.D. Laws Codified §§ 20-13-10, 20-13-23.7, 20-13-10.1, 3-6A-15	In 1990, statute did not cover those "regarded as" having a disability. § 20-13-1.
Applicable to the State and other public employers	§§ 20-13-1(7), (11), 3-6A-15	
Applicable to the State pre-1990	§§ 20-13-10, 20-13-1(7) (1986)	
Equitable and monetary remedies available	§ 20-13-35.1	In 1990, there was no right to civil action and no compensatory damages available.
State policies advancing the hiring of persons with disabilities	§§ 20-13-23.7 (1986), 60-7-2 (1967)	
State policies requiring accessibility and accommodation	§§ 5-14-12 to 14 (1965), 9-46-1.2 (1975), 20-13-23.2 (1976), 20-13-23 (1986)	

State policies favoring de-institutionalization	§ 27A-10-9.1 (1991); *former* §§ 27A-9-16.1 (1981), 27A-12-3.6 (1975)	Both in 1990 and today, these statutes applied only to involuntary civil commitment proceedings for dangerous mentally ill persons.

	TENNESSEE	COMMENTS
Prohibits employment discrimination based upon disability	Tenn. Code § 8-50-103(a)	In 1990, this statute did not cover those with a "record of" or "regarded as" having a disability. In 1990, statute provided no reasonable accommodation requirement.
Applicable to the State and other public employers	§ 8-50-103(a)	
Applicable to the State pre-1990	§ 8-50-103(a) (1976)	
Equitable and monetary remedies available	§§ 4-21-311, 8-50-103(b)(2)	Both in 1990 and today, § 4-21-311 applied only to remedies available in housing discrimination cases.
State policies advancing the hiring of persons with disabilities	§§ 71-4-202 (1972), 8-50-104 (1976)	

State policies requiring accessibility and accommodation	§§ 68-120-201 to 205 (1970), 62-7-112 (1955)	Both in 1990 and today, these statutes did not explicitly cover services, programs or activities.
State policies favoring de-institutionalization	§ 33-6-104(b) (orig. § 33-604(a)) (1976)	Both in 1990 and today, applied only to involuntary civil commitment proceedings for mentally ill persons who pose likelihood of serious harm.

	TEXAS	COMMENTS
Prohibits employment discrimination based upon disability	Tex. Lab. Code § 21.051	In 1990, this statute did not cover those "regarded as" having a disability.
Applicable to the State and other public employers	§ 21.002(8)(D)	
Applicable to the State pre-1990	§§ 21.051, 21.002 (1983)	
Equitable and monetary remedies available	§ 21.258	In 1990, only equitable relief available; no compensatory damages were available.
State policies advancing the hiring of persons with disabilities	Tex. Hum. Res. §§ 122.001 (1975), 121.003, 121.001 (1979)	
State policies requiring accessibility and accommodation	Rev. Civ. Stat. Ann. art. 9102 (1979); Hum. Res. Code § 121.003 (1979)	Both in 1990 and today, these statutes did not explicitly cover services, programs or activities.

State policies favoring de-institutionalization	Tex. Health & Safety Code § 574.036 (d) (1983)	Both in 1990 and today, this statute applied only to involuntary civil commitment proceedings for mentally ill persons who pose serious risk of harm or cannot provide for own basic needs.

	UTAH	COMMENTS
Prohibits employment discrimination based upon disability	Utah Code § 34A-5-106	In 1990 and today, this statute did not cover those with a "record of" or "regarded as" having a disability. § 34-35-2(9) (1990), § 34A-5-102(5) (1999). In 1990, there was no reasonable accommodation requirement. § 34-35-6.
Applicable to the State and other public employers	§ 34A-5-102(8)(a)	
Applicable to the State pre-1990	§§ 34A-5-102, 34A-5-106 (1979)	
Equitable and monetary remedies available	§ 34A-5-107(A)	Both in 1990 and today, compensatory damages were not available. § 34-35-7.1(9), (15) (1990), § 34A-5-107(9) (1999). *See Barton* v. *Exam Ctr. Indus. and Gen. Med. Clinic, Inc.*, 994 P.2d 1261, 1267 (Utah 2000).

State policies advancing the hiring of persons with disabilities	§§ 26-30-3 (1981), 53A-24-114 (1995)	
State policies requiring accessibility and accommodation	§§ 26-29-1 to 4 (1981), 26-30-1 (1981)	Both in 1990 and today, these statutes did not explicitly cover services, programs or activities.
State policies favoring de-institutionalization	§ 62A-12-234 (10)(d) (orig. § 64-7-36(10)(d)) (1975)	Both in 1990 and today, this statute applied only to involuntary civil commitment proceedings for dangerous mentally ill persons.

	VERMONT	COMMENTS
Prohibits employment discrimination based upon disability	Vt. Stat. 21 § 495(a)(1)	
Applicable to the State and other public employers	§ 495d(1)	
Applicable to the State pre-1990	§§ 495, 495d (1981)	
Equitable and monetary remedies available	§ 495b(b)	
State policies advancing the hiring of persons with disabilities	Title 21 §§ 497 (1963), 497a (1963)	
State policies requiring accessibility and accommodation	Title 21 §§ 273-276 (1987); Title 9 § 4502 (b)-(c) (1987)	In 1990, there was no explicit obligation to make reasonable accommodations.
State policies favoring de-institutionalization	Title 18 § 7617(c) (1977)	Both in 1990 and today, statute applied only to involuntary civil commitment proceedings for dangerous mentally ill persons.

	VIRGINIA	COMMENTS
Prohibits employment discrimination based upon disability	Va. Code §§ 51.5-41.A, 2.1-716, 2.1-116.06	Both in 1990 and today, statutes did not cover those "regarded as" having a disability. § 51.5-3.
Applicable to the State and other public employers	§§ 51.5-41.A, 2.1-116.06	
Applicable to the State pre-1990	§§ 51.5-41.A, 2.1-716 (1985)	
Equitable and monetary remedies available	§§ 51.5-46, 2.1-116.07.B	Both in 1990 and today, relief excluded compensatory damages for pain and suffering.
		Both in 1990 and today, backpay limited to 180 days prior to the filing of a complaint.
State policies advancing the hiring of persons with disabilities	§§ 2.1-715 (1987), 2.1-116.10 (1979), 51.5-41.B (1972), 2.1-116.14 (1979)	

State policies requiring accessibility and accommodation	§§ 2.1-516 (1970), 51.5-44 (1972); 2.1-715 (1987)	Both in 1990 and today, these statutes contained no explicit obligation to make reasonable accommodation. Both in 1990 and today, these statutes did not explicitly cover services, programs or activities.
State policies favoring de-institutionalization	§ 37.1-67.3 (1976)	Both in 1990 and today, statute applied only to involuntary civil commitment proceedings for mentally ill persons who pose likelihood of serious harm or are substantially unable to take care of self.

WASHINGTON COMMENTS

Prohibits employment discrimination based upon disability	Wash. Rev. Code § 49.60.180	
Applicable to the State and other public employers	§ 49.60.040 (1), (3)	
Applicable to the State pre-1990	§§ 49.60.180, 49.60.040 (1), (3) (1973)	
Equitable and monetary remedies available	§ 49.60.250	Compensatory damages in administrative proceedings were capped at $1,000 in 1990, and $10,000 today.
State policies advancing the hiring of persons with disabilities	§§ 70.84.080 (1969), 70.84.010 (1969), 49.60.010 (1973), 50.12.250 (1987)	

State policies requiring accessibility and accommodation	§§ 19.27.031 (5) (1985), 70.92.110 (1975), 70.84.010 (1969)	
State policies favoring de-institutionalization	§§ 71.05.320 (1973), 17.24.015 (1989)	Both in 1990 and today, applied only to involuntary civil commitment proceedings for mentally ill persons who pose likelihood of serious harm or are gravely disabled.

	WEST VIRGINIA	COMMENTS
Prohibits employment discrimination based upon disability	W.Va. Code § 5-11-9	
Applicable to the State and other public employers	§ 5-11-3(d)	
Applicable to the State pre-1990	§§ 5-11-9, 5-11-3(d) (1973)	
Equitable and monetary remedies available	§§ 5-11-13(b), (c)	Both in 1990 and today, only incidental compensatory damages (the modern equivalent of $1,000 in 1977) were available in administrative proceedings.
State policies advancing the hiring of persons with disabilities	§§ 5-15-7 (1969), 5A-3A-1 (1990)	
State policies requiring accessibility and accommodation	§§ 5-11-2 (1981), 5-15-4 (1969), 5-11-9(6) (1973)	

State policies favoring de-institutionalization	§§ 27-5-3(a) (1979), 27-5-4(j)(2) (1979)	Both in 1990 and today, applied only to involuntary civil commitment proceedings for mentally ill persons who pose likelihood of serious harm.

	WISCONSIN	COMMENTS
Prohibits employment discrimination based upon disability	Wis. Stat. §§ 111.321-.322, 111.34	
Applicable to the State and other public employers	§ 111.32(6)(a)	
Applicable to the State pre-1990	§§ 111.321-.322, 111.32(6)(a), 111.34 (1965)	
Equitable and monetary remedies available	§ 111.39(c)	Both in 1990 and today, there were no compensatory damages available.
State policies advancing the hiring of persons with disabilities	§ 230.01(2) (1977); 1989 Act 345 § 1 (1989); Wis. Admin. Code ER-MRS 27.03(1), 27.04(1), 27.05(1) (1988)	
State policies requiring accessibility and accommodation	§§ 101.13 (1963), 346.503 (1981), 174.056 (1967)	

State policies favoring de-institutionalization	§ 51.20(13)(c) (1975)	Both in 1990 and today, applied only to involuntary civil commitment proceedings for dangerous mentally ill persons.

	WYOMING	COMMENTS
Prohibits employment discrimination based upon disability	Wyo. Stat. § 27-9-105(a)	
Applicable to the State and other public employers	§ 27-9-102(b)	
Applicable to the State pre-1990	§§ 27-9-102(b), 27-9-105(a) (1985)	
Equitable and monetary remedies available	§ 27-9-106(g)	
State policies advancing the hiring of persons with disabilities	§§ 27-1-110 to -111 (1967), 9-2-115 (1965)	
State policies requiring accessibility and accommodation	§§ 16-6-501 to 504 (1969), 35-13-201 (1967)	Both in 1990 and today, these statutes did not explicitly cover services, programs or activities.

State policies favoring de-institutionalization	§ 25-10-110(j) (1981)	Both in 1990 and today, applied only to involuntary civil commitment proceedings for mentally ill persons who pose imminent threat of physical harm.